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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1994

SEMINOLE TRIBE OF FLORIDA,
Petitioner,

VS.

STATE OF FLORIDA, et al.,
Respondent.

On Writ of Certiorari
To the United States Court of Appeals
For the Eleventh Circuit

BRIEF OF *AMICI CURIAE* NATIONAL INDIAN GAMING ASSOCIATION, MINNESOTA INDIAN GAMING ASSOCIATION AND CALIFORNIA-NEVADA INDIAN GAMING ASSOCIATION IN SUPPORT OF PETITIONER; APPENDIX IN SUPPORT

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I. Interest of Amici Curiae

This brief of amici curiae National Indian Gaming Association, Minnesota Indian Gaming Association and California-Nevada Indian Gaming Association (hereinafter the "Associations"), is filed in support of petitioner Seminole Tribe of Florida pursuant to the written consent of all parties. The Associations are national and regional organizations representing the interests of federally recognized tribal governments that depend on gaming under the Indian Gaming Regulatory Act, 25 U.S.C. sections 2701-2721

("IGRA" or the "Act") to fund education, care for the elderly, housing, health care and other tribal governmental programs. Congress anticipated that in order to achieve the Act's goals of tribal self-sufficiency and funding for important governmental projects, tribal gaming activities would be pursued in, and have an impact on, interstate commerce. Congress recognized the effects Indian gaming would have on interstate commerce and enacted IGRA, in part, to address those effects. Amici will also demonstrate that, just as Congress expected, Indian gaming in practice has had a significant impact on interstate commerce.

The success of tribal governmental gaming depends in large part on the tribes' ability to engage in what the Act classifies as "class III" gaming, which is clearly the most economically competitive form of gaming available.[1] Congress provided, however, that in order to engage in class III gaming a tribe must either reach a Tribal-State compact or determine through court action that the state has chosen not to avail itself of the opportunity to regulate class III gaming. Amici share a concern that Congress' carefully-crafted balance of tribal and state interests, which conditions class III gaming on either achieving Tribal-State compacts — with

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[1] IGRA divides gaming into three classes. Class I gaming consists of social or traditional games, and is solely regulated by Tribes. *See* 25 U.S.C. §§ 2703(6), 2710(a)(1). Class II gaming consists of bingo and similar games, as well as nonbanking card games, and is regulated by Tribes and the National Indian Gaming Commission. *Id.* at §§ 2703(7), 2710(a)(2). Class III gaming consists of all other forms of gaming, *id.* at § 2703(8), including those forms of gaming in which states and private interests are most often involved, including horse racing, lotteries, and games associated with casinos. Because of the competition from those sources, and their importance in the marketplace, tribes which are deprived of class III opportunities are likely not to derive the revenues which generate the jobs and economic development demonstrated below, at Section III(E) of this brief, which exemplify the kinds of results which can be achieved where the class III process has worked.

court-supervised mediation to overcome negotiating impasses — or removing uninterested states from the process, not be frustrated by the Eleventh Amendment barrier erroneously erected by the Eleventh Circuit's opinion in this case, reported at 11 F.3d. 1016 (11th Cir. 1994). The lower court held that Congress lacks authority to abrogate the states' sovereign immunity to provide the judicial supervision necessary to carry out the class III process Congress so carefully designed.

In erroneously determining that Florida could invoke its sovereign immunity to upset the delicate balance wrought by Congress in IGRA, the Eleventh Circuit incorrectly held that IGRA was enacted exclusively under the Indian Commerce Clause, and that Congress lacked the power under that clause to abrogate state immunity. While the Indian Commerce Clause doubtlessly supports IGRA, and amici agree with petitioner Seminole Tribe that the Indian Commerce Clause alone empowers Congress to abrogate state sovereign immunity where necessary to carry out its constitutional duties regarding Indian affairs, the Act makes clear that Congress was also acting pursuant to its powers over interstate commerce. An analysis of that power provides further support to petitioner's position, as well as supplying an independent basis for upholding the Act's class III compacting process.

II. Summary of Argument

Congress enacted IGRA, in part, pursuant to its powers under the Interstate Commerce Clause, and Tribes are in fact engaged in such commerce. Congress was explicitly concerned in IGRA with the tribes', states' and commercial gaming industries' interstate economic interests and impact. The Act anticipates that tribes will use the mails, telephones, broadcasting and other technologies in furthering the Act's goals of promoting tribal self-sufficiency. Indeed,

congressional hearings and other forums that have examined the impact of tribal governmental gaming under IGRA are replete with examples of the Act's effect on interstate commerce. Those effects include: major purchases and sales of food and other goods which typically move in interstate commerce; dependency on transportation programs which utilize common carriers and highways; extensive employment for persons who commute from far beyond reservation boundaries with corresponding reductions in reliance on state and federal welfare programs; and dramatic upswings in tourism and visitors crossing state lines to enjoy tribal facilities. IGRA also addresses the need and means for combating organized crime,[2] which subject this Court has repeatedly held implicates interstate commerce. IGRA's references to the gaming industry generally and the reputation and integrity of those who participate in it, its focus on controlling organized crime, as well as the substantial impact on commerce which Indian gaming actually has, more than amply evidence congressional intent to legislate over matters affecting interstate commerce.

For all of these reasons, the Associations submit that Congress enacted IGRA, in part, under the Interstate Commerce Clause. Amici suggest that the Eleventh Circuit's contrary holding was erroneous, and respectfully request that the Court reverse the Eleventh Circuit's opinion and judgment.

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[2] Albeit little if any evidence of such crime in Indian Country has ever existed, largely due to tribes' own vigorous implementation of regulatory and control standards. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 221, 107 S.Ct. 1083, 1094 (1987); S. Rep. No. 446, 100th Cong., 2d Sess. 1, 33 (1988) (Additional Views of Mr. McCain), *reprinted in* 1988 U.S. Code Cong. & Admin. News 3071, 3103 (hereinafter "Senate Report").

III. Argument

A. Congress Enacted the Indian Gaming Regulatory Act, in Part, Pursuant to its Powers Under the Interstate Commerce Clause

The Eleventh Circuit erroneously concluded that Congress did not enact IGRA pursuant to its plenary powers over interstate commerce. Specifically, the court found that "alleviating a supposed burden on interstate commerce" was not among Congress' purposes in enacting IGRA. *Seminole Tribe of Florida v. Florida*, 11 F.3d 1016, 1025-26 (11th Cir. 1994). In reaching this conclusion, the lower court misapprehended the broad scope of congressional power under the Interstate Commerce Clause. Congress' power over interstate commerce is not limited to alleviating pre-existing burdens thereon, as the Eleventh Circuit assumed.

The Interstate Commerce Clause gives Congress the power to legislate with respect to all "commerce which concerns more states than one." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 194 (1824). The power generally allows Congress to reach at least three categories of problems:

> First, the use of channels of interstate or foreign commerce which Congress deems are being misused, as, for example, the shipment of stolen goods (18 U.S.C. secs. 2312-2315) or of persons who have been kidnaped (18 U.S.C. sec. 1201). Second, protection of the instrumentalities of interstate commerce, as for example, the destruction of an aircraft (18 U.S.C. sec. 32), or persons or things in commerce, as, for example, thefts from interstate shipments (18 U.S.C. sec. 659). Third, those activities affecting commerce.

Perez v. United States, 403 U.S. 146, 150, 91 S.Ct. 1357, 1359 (1971).

When Congress regulates under the Interstate Commerce Clause, it only needs a rational basis for finding that the regulated activity substantially affects interstate commerce, and the means it employs need only be reasonably adapted to the ends sought. *Hodel v. Virginia Surface Min. & Recl. Ass'n*, 452 U.S. 264, 101 S.Ct. 235 (1981). The "substantial economic effect" test is easily satisfied, even where the regulated activity is seemingly only local in nature. *See Wickard v. Filburn*, 317 U.S. 111, 63 S.Ct. 82 (1942) (regulation of wheat grown by a farmer wholly for home consumption was within Congress' interstate commerce power because it supplied the grower's needs which otherwise would have been satisfied by purchases in the open market). *See also United States v. Ohio*, 385 U.S. 9, 87 S.Ct. 66 (1966); (*per curiam*) *United States v. Haley*, 358 U.S. 644, 79 S.Ct. 537 (1959); (*per curiam*) *Bender v. Wickard*, 319 U.S. 731, 63 S.Ct. 1326 (1943) (*per curiam*); *Beckman v. Mall*, 317 U.S. 597, 63 S.Ct. 199 (1942) *(per curiam)*.

Congress need not even have interstate commerce as its primary motive when legislating under that power as is evident from the cases upholding the Civil Rights Act of 1964.[3] In *Heart of Atlanta Motel v. United States*, 379 U.S.

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[3]Nor must Congress recite by name the particular power under which it legislates. "The constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *Woods v. Miller*, 333 U.S. 138, 144, 68 S.Ct. 421, 424 (1948). *See also Equal Employment Opportunity Commission v. Wyoming*, 460 U.S. 226, 243 n.18, 103 S.Ct. 1054, 1064 n.18 (1983); *Fullilove v. Klutznick*, 448 U.S. 448, 476-78, 100 S.Ct. 2758, 2773-2774 (1980). In *United States v. Darby*, 312 U.S. 100, 61 S.Ct. 451 (1941), "a class of activities was held properly regulated by Congress without proof that the particular intrastate activity against which a sanction was laid had an effect on commerce." *Perez*, 402 U.S. at 152, 91 S.Ct. at 1360. In *Darby*, the Court recognized that "Congress has sometimes left it to the courts to determine whether the intrastate activities have the prohibited effect on the commerce, as in the Sherman Act. . . ." *Darby*, 312 U.S. at 120, 61 S.Ct. at 460. The fact that a statute does not contain congressional findings about the regulated activity's impact on interstate commerce is not determinative of the statute's constitutionality under the Interstate Commerce Clause. *Cf. See Katzenbach v. McClung*, 379 U.S. 294, 304, 85 S.Ct. 377, 384 (1964). Nor does "Congress need [to] make particularized findings in order to legislate." *Perez*, 402 U.S. at 156, 91 S.Ct. at 1362.

In this regard amici "note[s] the heavy presumption of constitutionality to which a 'carefully considered decision of a coequal and representative branch of our Government' is entitled." *U.S. Dept. of Labor v. Triplett*, 494 U.S. 715, 722, 110 S.Ct. 1428, 1432 (1990) (*quoting Walters v. National Assn. of Radiation Survivors*, 473 U.S. 305, 319, 105 S.Ct. 3180, 3188 (1985)). *See also Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, ____ U.S. ____, 113 S.Ct. 2264, 2287 (1993); *Bowen v. Kendrick*, 487 U.S. 589, 817, 108 S.Ct. 2562, 2579 (1988).

241, 85 S.Ct. 348 (1964), the Court held that the Interstate Commerce Clause empowered Congress to regulate a motel located in downtown Atlanta that did not rent rooms to blacks. The requisite nexus to commerce existed because the motel was located near two interstate highways, derived 75 percent of its occupancy from out-of-state guests, and solicited business outside the state. The Court explained that Congress' power "to promote interstate commerce also includes the power to regulate the local incidents thereof." *Id.* at 258, 85 S.Ct. at 358. *See also Katzenbach v. McClung*, 379 U.S. 294, 85 S.Ct. 377 (1964) (despite restaurant's distance from interstate transportation facilities, and despite lack of evidence that much of its business came from out-of-state travelers, a sufficient connection to interstate commerce existed because — looking to the total incidence of the regulated activities on commerce — the restaurant bought 46 percent of its food from a supplier who in turn had purchased it from out of state).

The Interstate Commerce Clause also gives Congress power to use prohibitions on the interstate transportation of

items or people in furtherance of "police power" or "general welfare" regulations. *See, e.g., United States v. Darby*, 312 U.S. 100, 61 S.Ct. 451 (1941) (upholding Fair Labor Standards Act's wage and hour regulations for employees engaged in production of goods for interstate commerce, the statute's prohibitions against interstate shipment of goods produced in violation of those regulations, and its criminal penalties for employing workers engaged in commerce in violation of those regulations). In *Perez*, this Court upheld the Consumer Credit Protection Act, 18 U.S.C. 891, *et seq.*, which prohibited loansharking, even in entirely local activities, noting that Congress had recognized that loan sharks "are in large part under the control of 'organized crime,' " *Perez*, 402 U.S. at 147, 91 S.Ct. at 1358, and that organized crime, virtually by definition, operates on a national scale. *See id.* at 147 n. 1, 150, 91 S.Ct. at 1358 n.1, 1359.

In short, the Interstate Commerce Clause "has grown to vast proportions in its applications," *Employees of the Dep't of Pub. Health and Welfare v. Missouri Dep't of Pub. Health and Welfare*, 411 U.S. 279, 285, 93 S.Ct. 1614, 1618 (1973), such that "[i]t would be difficult to overstate the breadth or depth of the commerce power." *Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 20, 109 S.Ct. 2273, 2284 (1989) (Brennan, J., plurality).

Numerous aspects of IGRA reveal a sufficient nexus to commerce to bring the Act within Congress' interstate commerce powers. First, Congress expressly contemplated interstate gaming activity in IGRA. Second, in enacting IGRA, Congress balanced the competing economic interests of Indian Tribes, the states, and the commercial gaming industry. Third, IGRA regulates both Indian and non-Indian economic concerns. Fourth, Indian gaming has a substantial effect on interstate commerce, a fact that was well-known to Congress when it enacted IGRA. Finally, Congress enacted IGRA, in part, to assure that the nation-

wide problem of organized crime does not infiltrate Indian gaming.

B. Congress Expressly Contemplated Interstate Gaming Activity in IGRA

IGRA's Senate Report expressly contemplates interstate gaming activity:

> In this regard, the Committee recognizes that tribes may wish to join with other tribes to coordinate their class II[4] operations and thereby enhance the potential of increasing revenues. For example, linking participant players at various reservations *whether in the same or different states, by means of telephone, cable, television or satellite may be a reasonable approach for tribes to take.* Simultaneous games participation between and among reservations can be made practical by use of computers and telecommunications technology as long as the use of such technology does not change the fundamental characteristics of the bingo or lotto games

[4]While this comment was in the context of class II gaming, the same possibilities exist regarding class III gaming. Interstate simulcast wagering on horse races is but one example of interstate gaming within IGRA's class III category. *See, e.g.*, Interstate Horse Racing Act, 15 U.S.C. § 3001 *et seq.* Moreover, IGRA's provisions regarding the permissible scope of both class II and class III gaming contain precisely the same requirement — namely, that the gaming activity be "located within a state that permits such gaming for any purpose by any person, organization or entity." 25 U.S.C. § 2710(b)(1)(A)) (class II). *Compare* 25 U.S.C. § 2710(d)(1)(B) (identical language regarding class III). As this Court has long held, identical words used in different parts of the same act are intended to have the same meaning. *See Department of Revenue of Oregon v. ACF Industries, Inc.*, ___ U.S. ___, 114 S.Ct. 843, 849 (1994); *Sorenson v. Secretary of Treasury*, 475 U.S. 851, 860, 106 S.Ct. 1600, 1606 (1986); *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87, 55 S.Ct. 50, 51 (1934); *Atlantic Cleaners & Dryers, Inc. v. United States*, 286 U.S. 427, 433, 52 S.Ct. 607, 609 (1932).

> and *as long as such games are otherwise operated in accordance with applicable Federal communications law.*

Senate Report at 9 (emphasis added).

The Senate Report's reference to Federal communications law also suggests Congress' concern with interstate commerce, for Congress' power to regulate the communications industry flows from its interstate commerce power. *See, e.g., Louisiana Public Service Commission v. Federal Communications Commission*, 476 U.S. 355, 370-71, 106 S.Ct. 1890, 1899-1900 (1986) (purpose of Communications Act of 1934, 47 U.S.C. §§ 151, 152(b), is to regulate interstate commerce in communication). *See also Federal Election Commission v. N.R.A. Political Victory Fund*, ___ U.S. ___, 115 S.Ct. 537, 542 (1994) (*citing Hearings Before the Subcommittee on Communications of the Senate Committee on Commerce*, 93rd Cong., 1st Sess., 70-71 (1973)); 42 U.S.C. § 2000e(g) (defining "commerce" as including "communication among the several states"). Additionally, the Act explicitly exempts tribal marketing efforts from the criminal sanctions ordinarily imposed in connection with the transmission of gambling information by telephone and through the mails. *See* 25 U.S.C. § 2720.

In sum, the regulation of interstate gaming activities such as those Congress contemplated when enacting IGRA are plainly within Congress' interstate commerce power.

C. Congress' Concern in IGRA with the States' and the Commercial Gaming Industry's Economic Interests, as well as Tribes' Interests, Implicates Interstate Commerce

In enacting IGRA, Congress was concerned with balancing the interests of the states and the commercial gaming industry with those of Indian tribes:

> S. 555 [IGRA] is the outgrowth of several years of discussions and negotiations between gaming tribes, *states, the gaming industry*, the administration, and the Congress, in an attempt to formulate a system for regulating gaming on Indian lands. In developing the legislation, the issue has been how best to preserve the right of tribes to self-government while, at the same time, to protect both the tribes and the gaming public from unscrupulous persons. An additional objective inherent in any government regulatory scheme is to achieve *a fair balancing of competitive economic interests.*

Senate Report at 1-2 (emphasis added). The Senate Report also noted that "[a]s the debate unfolded, it became clear that the interests of the states and of the gaming industry [included] . . . protection of their own games from a new source of economic competition." Senate Report at 33 (Additional Views of Mr. McCain).[5]

Congress' concern with balancing competing economic interests is apparent on IGRA's face, for the Act provides that "[i]n determining . . . whether a state has negotiated [with a Tribe] in good faith [for a class III compact], the court — (I) may take into account . . . *adverse economic*

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[5] *See also* Senate Report at 36 (Additional Views of Mr. Evans) ("Ironically, the strongest opponents of tribal authority over gaming on Indian lands are from states whose liberal gaming policies would allow them to compete on an equal basis with the tribes").

impacts on existing gaming activities . . ." 25 U.S.C. § 2710(d)(7)(B)(iii) (emphasis added). IGRA's Senate Report makes the same point:

> The bill allows states to consider negative *impacts on existing gaming activities.* That is not to say that the bill would allow states to reject Indian gaming on the mere showing that Indian gaming will compete with non-Indian games. Rather, states must show that economic consequences will be severe and that they will clearly outweigh positive economic consequences.

Senate Report at 14 (emphasis added). *See also* Senate Report at 18-19 ("[I]f the court finds for the tribe, it will order a 60-day negotiation period and may take into account public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities").

Congress' explicit recognition that one "objective" of IGRA is to balance competing economic interests, and its direction that federal courts may consider such competition in determining the states' good faith, is strong evidence that Congress adopted the Act in part under its interstate commerce power.[6]

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[6]Congress also balanced related concerns:

> After lengthy hearings, negotiations and discussions, the Committee concluded that the use of compacts between tribes and states is the best mechanism to assure that the *interests of both sovereign entities* are met with respect to the regulation of complex gaming enterprises such as parimutuel horse and dog racing, casino gaming, jai alai and so forth. *The Committee notes the strong concerns of states that state laws and regulations relating to sophisticated forms of class III gaming be respected on Indian lands where, with few exceptions, such laws and regulations do not now apply. The Committee balanced these concerns against the strong tribal opposition* to any imposition of state jurisdiction over activities on Indian lands. The Committee concluded that the compact process is a viable mechanism for setting various matters between two equal sovereigns. . . . In the Committee's view, both state and tribal governments have significant governmental interests in the conduct of class III gaming. . . . A state's governmental interests with respect to class III gaming on Indian lands include the interplay of such gaming with the state's public policy, safety, law and other interests, as well as impacts on the state's regulatory system, including its economic interest in raising revenue for its citizens. *It is the Committee's intent that the compact requirement for class III not be used as a justification by a state for excluding Indian tribes from such gaming or for the protection of other state-licensed gaming enterprises from free market competition with Indian tribes.*

Senate Report at 13 (emphasis added).

D. IGRA Regulates Non-Indian Economic Concerns

IGRA directly regulates state and commercial gaming interests by barring them from owning gaming projects on Indian lands. Specifically, the Act excludes all but Indian tribes from having a "proprietary interest and responsibility for the conduct of any gaming activity" on Indian land. 25 U.S.C. § 2710(b)(2)(A).

The Act also controls non-Indian economic concerns by regulating contracts between tribes and other entities related to the management of tribal gaming projects. *See* 25 U.S.C. § 2711. "As used in section 12 and throughout the bill, the term 'management contract' refers to agreements governing the overall management and operation of an Indian gaming facility by *an entity other than the tribe or its employees.*" Senate Report at 12-13 (emphasis added). IGRA generally limits the terms of management contracts, *see id.* at § 2711(b)(5), and generally limits the manager's fees. *See id.* at § 25 U.S.C. § 2711(c)(1). *See also* Senate Report at 8. Congress intended that these limitations on non-Tribal

entities apply retroactively to contracts that preexisted the Act:

> In the area of gaming where many factors other than ordinary business risk enter into the equation, the Committee has no reluctance in requiring changes to existing gambling enterprise contracts, whether or not such contracts have been given a stamp of approval by the Secretary.

Senate Report at 15.

IGRA's direct regulation of non-Indian economic concerns is further evidence that Congress adopted the Act, in part, under its interstate commerce power.

E. Indian Gaming Has a Substantial Effect on Interstate Commerce

In enacting IGRA, Congress found that "numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue." 25 U.S.C. § 2701(1). Congress also found that "a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government." *Id.* at § 2701(4).

As Indian Tribes engage in the economic activities IGRA permits, they necessarily have a substantial impact on interstate commerce. Increased tribal self-sufficiency reduces tribal dependence on federal and state funding, programs, and support. This impacts interstate commerce by reducing federal and state expenditures, with related implications for federal taxation. Further, as an industry that had generated more than $100 million on a national aggregate basis as of 1988[7] — and which has continued to grow in the subsequent seven years — the Indian gaming industry impacts commerce directly by: (1) purchasing, leasing, and renting equipment and supplies from non-Indian businesses through interstate commerce; (2) employing thousands of non-Indians to help finance, design, construct, manage, and operate Indian gaming facilities; and (3) inviting and serving out-of-state non-Indian customers.

[7] *See* Senate Report at 20.

In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 107 S.Ct. 1083 (1987), this Court recognized the potential scale of Tribal gaming projects and their impact not only on the Tribes but on the commerce it attracted:

> [Tribes engaged in gaming] have built modern facilities which provide recreational opportunities and ancillary services to their patrons, who do not simply drive onto the reservations, make purchases and depart, but spend extended periods of time there enjoying the services the Tribes provide. The Tribes have a strong incentive to provide comfortable, clean, and attractive facilities and well-run games in order to increase attendance at the games. The tribal bingo enterprises are similar to the resort complex, featuring hunting and fishing, that the Mescalero Apache Tribe operates on its reservation through the "concerted and sustained" management of reservation land and wildlife resources. *New Mexico v. Mescalero Apache Tribe*, 462 U.S., at 341, 103 S.Ct., at 2390. The Mescalero project generates funds for essential tribal services and provides employment for tribal members.

Id. at 219-20, 107 S.Ct. at 1093-94.

Where states have participated in the compact process, tribes and surrounding communities have dramatically realized the important economic benefits Congress intended

IGRA to afford.[8] Class III operations, which are only possible after a Tribal-State Compact has been reached,[9] vividly demonstrate the inevitable impact such activities have on commerce:

> In the states where Indian tribes and states have worked together on a government-to-government basis, the objectives of the IGRA have begun to materialize to the benefit of both governments. Tribes have used gaming revenues to provide better governmental services for tribal members, better health care, higher quality education and employment.

Oversight Hearings on the Need for Amendments to the Indian Gaming Regulatory Act: Hearing Before the Committee of Indian Affairs, 103rd Cong., 2d Sess. 69 (1994) (testimony of Ada E. Deer, Assistant Secretary, Indian Affairs, Department of the Interior) hereafter ("Senate Hearings"), Appendix at 5a. Better health care, education, employment and other social benefits to Indian reservations impact everyone, Tribes and states, Indians and non-Indians alike.

In Minnesota, for example, the number of welfare recipients — both Indian and non-Indian — under the federal Aid to Families with Dependent Children program decreased by 14 percent between 1987 and 1992 in eight non-urban counties with Indian gaming, whereas statewide the number of welfare recipients increased 17 percent for the same period. *See* Deloitte & Touche, *A Historical Review of Gaming in the United States*, Appendix to Senate Hearings, May 17, 1994, at 207, Appendix at 36a. Minnesota entered into compacts with tribes soon after IGRA was passed. As a study conducted for the amicus Minnesota Indian Gaming Association (MIGA) by KPMG Peat Marwick has documented, Minnesota witnessed remarkable growth of tribal self-sufficiency and freedom from federal welfare dependency. *Id.* Indian gaming has directly created nearly 10,000 jobs for Minnesotans, and has indirectly created an estimated 20,000 additional jobs. *Id.* Of particular significance in terms of Indian gaming's impact on commerce is the fact that approximately 7,600 of those jobs are supported by tourism expenditures. *Id.* A number of these jobs are being filled by persons who live more than 25 miles from the reservation, particularly where tribal lands are remote. *See* KPMG Peat Marwick, Minnesota Indian Gaming Association, *Economic Benefits of Tribal Gaming in Minnesota*

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[8] Sometimes the most important gains for tribes and their states have been in situations where compacts were reached reluctantly through litigation, where the Eleventh Amendment was not an impediment. *See, e.g., Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F. Supp. 480 (W.D. Wis. 1991); *Sault St. Marie Tribe of Chippewa Indians v. Michigan*, 800 F. Supp. 1484 (W.D. Mich. 1992).

[9] The Bureau of Indian Affairs reports that as of January 26, 1995, 98 tribes in 22 states have entered into 114 Tribal-State compacts under IGRA. *See* Department of Interior, Tribal-State Compact List, January 26, 1995, Appendix at 2a. Despite the apparent success for both tribes and states once a compact is signed, most states which have signed compacts first compelled litigation or threatened sovereign immunity defenses if tribes sought relief under IGRA. Some states, like Washington, relying on the Eleventh Amendment, demanded that Tribes either accept a limited, generic "cookie cutter" compact dictated by the state and not the result of negotiations as Congress intended, or face years of litigation over the immunity issue. Meanwhile, tribal and congressional goals for self-sufficiency remain frustrated. Assistant Secretary Deer noted the difficulties caused by noncompacting states:

> In several non-Indian communities tribal gaming has proven to be a catalyst for their revitalization. In those states that have refused to negotiate with tribes, the tribes' efforts at achieving economic stability and self-sufficiency have been effectively frustrated.

Testimony of Ada Deer, Senate Hearings, May 17, 1994, at 69, Appendix at 4a.

1992, April, 1993, p. 14, Appendix at 68a. The impact on highway travel is obvious.

Similarly, a study conducted for the State of Minnesota to assist in its long-range planning determined that *15 percent (approximately 900,000) of the customers visiting Minnesota Indian casinos were from outside the state. See* Minnesota Planning, *High Stakes: Gambling In Minnesota*, March, 1992, at 12, Appendix at 77a. A 1993 update to that report observed:

> *Out-of-state visitors* to [Tribal government] casinos are having a *significant economic effect* on Minnesota. According to the Department of Trade and Economic Development these visitors were responsible for a $245 million dollar increase in the state's gross product and the creation of 7,600 jobs.

Minnesota Planning, Minnesota Gambling 1993, May, 1993, at 17, Appendix at 84a (emphasis added). The 1993 report noted that the number of out-of-state visitors had increased from 15 to 20 percent. *Id.* at 14, Appendix at 82a.

A survey of Tribal government gaming employees — again, both Indian and non-Indian — in Wisconsin revealed that 820 employees in 1992 had been welfare recipients prior to going to work for a tribe's gaming project, saving the state approximately $1.6 million and the federal government $1.4 million. *See* Deloitte & Touche, *supra*, at 209, Appendix at 38a.

Tribal governments account for approximately five percent of the American entertainment market related to gaming. While small in relative terms compared to the 34 percent market share held by private casinos and the 38 percent share occupied by state lotteries — the latter being by far the largest players in the gaming marketplace — tribal governments' gaming activities have a tremendous impact in absolute terms on Indian and neighboring communities. *Id.* at 187, Appendix at 16a. The size and breadth of Indian gaming projects where states have negotiated

tribal gaming compacts, and the impact of that activity on commerce, must be considered in determining what Congress was attempting to regulate under IGRA.[10]

In South Dakota, the impact tribal gaming projects have had on tourism is even more pronounced. In written testimony submitted to the Senate Hearings, Dr. Michael K. Madden, Professor of Economics, University of South Dakota, reported that prior to Indian gaming, aggregate travel spending in the five counties which now host tribal gaming projects totaled only about $8 million. By 1993, after the tribes began their class III operations pursuant to Tribal-State compacts,[11] travel spending had increased in those counties to about $31 million, an increase of 281 percent. *See* Madden, *Preliminary Estimates of Economic Impacts Related to Tribal Gaming in South Dakota*, Senate Hearings, May 17, 1994, at 246, Appendix at 87a. Professor Madden noted other benefits to Tribal and state economies:

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[10] As noted above, the Eleventh Circuit superficially dismissed the impact of Indian gaming on interstate commerce as irrelevant to Congress' purpose in enacting IGRA, but its analysis focused only on the control of organized crime:

> Congress' concern with organized crime was not that such activities would burden interstate commerce, but rather that prohibition of organized crime would "ensure that the Indian tribe is the primary beneficiary of the gaming operation, and . . . assure that gaming is conducted fairly and honestly by both the operator and the players." 25 U.S.C. § 2702(2). In addition, Congress wanted to criminalize the involvement of organized crime in order to "promote[ ] tribal economic development, self-sufficiency, and strong tribal government." 25 U.S.C. § 2702(1). In analyzing Congress' goals, it is clear that alleviating a supposed burden on interstate commerce was not among them.

Seminole, 11 F.3d at 1026. *See* discussion *infra* at Section III(F) of this brief.

[11] But not without substantial litigation delays. *See* fns. 8, 9, *Supra*.

> New wages and salaries in the regions surrounding the tribal casinos are estimated to be more than $25 million. Because most regions surrounding the tribal casinos are of low population, these added earnings have produced significant relative impacts on personal income within communities. . . .
>
> The use of [profits from tribally-owned casinos] vary from tribe to tribe. Some of the resources have been allocated to infrastructure improvements relating to the casinos themselves. Examples include lodging and camping facilities as well as additions to casino capacity. Other economic development programs have also been pursued. Training and educational programs for tribal members have been instituted or expanded within a number of the tribes.

Id. at 247, Appendix at 89a.

Perhaps the use of tribal gaming revenues in specific instances best illustrates IGRA's impact on commerce as well as on the tribes themselves. The Wisconsin Winnebago Nation has nearly 5,000 members, and was impoverished for many years. The opportunity to use gaming under IGRA's compacting process, as the Wisconsin tribes were able to do only after protracted litigation,[12] not only benefitted the Winnebago Nation in countless ways, but contributed significantly to the community around it. As Tribal Chair JoAnn Jones so eloquently explained to Congress:

> Indian gaming is not about gaming. It is about survival and bringing my people out of the third world conditions that they have lived in for generations. It is about sovereignty and the right of one government to operate free from the interference of another govern-

[12] *See Lac du Flambeau Band*, 770 F. Supp. 480.

> ment. Finally, it is about an agreement and compromise worked out among sovereign governments.
>
> When Congress established the National Indian Gaming Regulatory Act it said the Act had three purposes: Promote tribal economic development, self sufficiency, and strong tribal government. Indian gaming in Wisconsin is doing all of these things and more.
>
> The Winnebago Nation employs more than 2000 people. Nearly 80% of these people are employed at our gaming enterprises. Employment has quadrupled in the last two years. More than 60% of these employees are non-Indian. More than 300 of our gaming employees came from the welfare rolls. Statewide, Indian gaming jobs took 800 people off welfare and 1400 more from the unemployment rolls. Casino income is the sole support for the families of nearly 80% of the casino employees. According to [state] Health & Social Service Secretary Gerald Whitburn, state aid to Indian families has dropped. He says that Indian gaming is a major reason for this drop.

Testimony of JoAnn Jones, Tribal Chair, Wisconsin Winnebago Nation, Senate Hearings, April 26, 1994, at 68, Appendix at 96a-97a.

In Michigan, the Sault St. Marie Tribe of Chippewa Indians, with a citizenship of approximately 20,000 members, has experienced similar results, most of which came after the State of Michigan, following extended periods of negotiation and litigation (in this instance spanning five years), entered into Tribal-state compacts.[13] The Tribe is the sole owner and operator of all its gaming operations. *See* Testimony of Bernard Bousher, Tribal Chairman, Senate Hearings, April 27, 1994, at 118, Appendix at 101a. Like the

[13] *See Sault St. Marie Tribe of Chippewa Indians*, 800 F. Supp. 1484.

Wisconsin Winnebago Nation, which employs over 300 persons in connection with surveillance, security and internal accounting controls,[14] the Sault St. Marie Tribe has invested substantial resources in order to satisfy the congressional mandate of providing gaming entertainment that is conducted fairly and honestly, not only for the Tribe, but for the customers as well. Bousher at 119-120, Appendix at 103a-105a. *See* 25 U.S.C. § 2702(2). And as with tribes in other states, many of Sault St. Marie's patrons are tourists, thus developing the economy of the reservation as well as for the entire community. *See, e.g.*, Letter from Sault Area Chamber of Commerce to Governor John Engler, dated May 13, 1993, Senate Hearings, April 26, 1994, at 202, Appendix at 108a-109a. Mayor Bruce J. Dodson of nearby St. Ignace, Michigan, reports that in an area of 47 percent unemployment, "every able bodied person is now working in a three county area . . . the Tribe has certainly been one of the main contributors." Senate Hearings, *supra*, at 203, Appendix at 112a.

In New York State, the Oneida Nation, which had a 44 percent unemployment rate in 1990, is now the second largest employer in Central New York. *See* testimony of Gaiongwilode, Tribal Chairman, Senate Hearings, July 19, 1994, at 226, 243, Appendix at 117a-120a. The Oneida Nation's transformation has been typical of other tribes which finally obtained the Tribal-State compact Congress envisioned:

> Thanks to revenue from the casino, the Nation is able to house, feed, and educate its people, to nurture and enhance the Oneida's unique culture, to repossess ancestral homeland, to significantly benefit the local community, to research and develop other business

[14] Jones Testimony, *supra*, at 67, Appendix at 94a.

> enterprises, and to otherwise provide for the seven generations yet to come as our culture requires us to do.

Id. at 227, Appendix at 117a.

Indeed, while the effect of Indian gaming on surrounding communities, the states, and commerce generally has been significant, and clearly was within Congress' sights when it enacted IGRA, the uses of gaming revenues on the reservations themselves have reinforced the importance of tribal participation for governmental purposes in this burgeoning aspect of the entertainment and leisure industry. According to the MIGA study, for example, in 1992 Minnesota Tribes provided over $17 million for tribal housing, $39.5 million in direct services, and $800,000 in charitable donations. Another $4 million was generated for human services and tribal educational programs. *See* MIGA Study, at 10, Appendix at 64a.

Thus it is apparent that — just as Congress anticipated — Indian gaming has had a substantial impact on interstate commerce.

F. Congress Enacted IGRA, in Part, to Combat Organized Crime

Congress declared that IGRA's purpose is, in part, "to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that the gaming is conducted fairly and honestly by both the operator and players. . . ." 25 U.S.C. § 2702(2).[15]

[15] Congress' concern with crime and law enforcement is palpable in the Senate Report. *See* Senate Report at 20 ("The need for Federal and/or state regulation of gaming, in addition to, or instead of, tribal regulation, has been expressed by various state and Federal law enforcement officials out of fear that Indian bingo and other gambling enter-

See also Senate Report at 13 ("The purpose of the Act is to provide a statutory basis for operating Indian gaming, to promote economic development, to shield tribes from organized crime"). Reading these three distinct purposes as if they were one, the Eleventh Circuit concluded that Congress' only concern with "organized crime" was that it might prevent Indian tribes from being the primary beneficiary of the gaming operation: "In analyzing Congress' goals, it is clear that alleviating a supposed burden on interstate commerce was not among them." 11 F.3d at 1026. There are at least three problems with the Eleventh Circuit's reasoning.

First, section 2702(2) plainly sets forth three distinct, though related, purposes. For example, it is conceivable that an Indian tribe might not be the primary beneficiary of gaming activity even in the absence of organized crime. Similarly, fair and honest gaming does not insure that the Indian tribe is the primary beneficiary of the gaming activity. Second, the Eleventh Circuit's interpretation of section 2702(2) suggests that the presence of organized crime in Indian gaming is perfectly acceptable so long as the Indian tribe remains the primary beneficiary of the gaming activity. It is difficult to imagine Congress embracing such a notion. Third, if the lower court's interpretation were cor-

prises may become targets for infiltration by criminal elements"). *See also id.* at 5 ("Representatives of states with experience in regulating some forms of gaming activities, such as Nevada and California, have expressed concern over the potential for the infiltration of organized crime or criminal elements in Indian gaming activities. The criminal division of the U.S. Department of Justice has expressed similar concerns, although as stated in the additional views of Senator John McCain, in 15 years of gaming activity on Indian reservations, there has never been one clearly proven case of organized criminal activity"); *id.* at 6 ("the Committee has carefully considered the law enforcement concerns of tribal and state governments, as well as those of the Federal Government, and the need to fashion a means by which differing public policies of these respective governmental entities can be accommodated and reconciled").

rect, Congress' repeated use of commas[16] and the word "to" before each of the three purposes stated in 25 U.S.C. section 2702(2) would be surplusage. That result "violates the established principle that a court should 'give effect, if possible, to every clause and word of a statute.' " *Moskal v. United States,* 498 U.S. 103, 109-110, 111 S.Ct. 461, 466 (1990) (*quoting United States v. Menasche*, 348 U.S. 528, 538-39, 75 S.Ct. 513, 519-20 (1955)). In sum, the Eleventh Circuit read section 2702(2) too narrowly. Congress plainly intended IGRA to, *inter alia*, combat organized crime.

Congress has expressly found that " 'organized crime is interstate in character,' " *Perez*, 402 U.S. at 147 n.1, 91 S.Ct. at 1358 n.1 (*quoting* 18 U.S.C. § 891, Notes), and that "[o]rganized crime operates on a national scale." *Id.* at 150, 91 S.Ct. at 1359. Consistent with this fact, Congress has long enacted criminal statutes under its interstate commerce power. *See, e.g., Caminetti v. United States,* 242 U.S. 470, 37 S.Ct. 192 (1917) (White Slave Traffic Act); *Champion v. Ames*, 188 U.S. 321, 23 S.Ct. 321 (1903) (Federal Lottery Act); *United States v. Jarrett*, 705 F.2d 198, 202-03 (7th Cir. 1983) (Hobbs Act); *United States v. Martino*, 648 F.2d 367, 381 (5th Cir. 1981) (Racketeer Influenced and Corrupt Organizations Act); *United States v. Cappetto*, 502 F.2d 1351, 1356 (7th Cir. 1974) (1975) (Organized Crime Control Act).

Congress has also criminalized the manufacture, recondition, repair, sale, transport, possession, or use of gambling devices in interstate commerce. *See* Johnson Act, 15 U.S.C. §§ 1171-1178. The Johnson Act expressly applies in Indian country. *See id.* at § 1175. IGRA provides, however, that 15 U.S.C. section 1175 does not apply to any gaming con-

[16]Congress' use of commas between the three purposes set forth in section 2702(2) indicates a "separation of sentence elements . . . [or] items in a series . . ." Webster's New Twentieth Century Dictionary, unabridged, at 362 (2d ed. 1983).

ducted under a Tribal-State compact that is in effect and is entered into by a state in which gambling devices are legal. *See* 25 U.S.C. § 2710(d)(6). *See also* Senate Report at 15. Thus Congress, pursuant to its interstate commerce power, was concerned with gaming devices, and chose to allow the Johnson Act prohibitions to remain in effect absent a class III compact satisfying the requirements of 25 U.S.C. section 2710(d)(6).

Related to its concerns regarding organized crime was Congress' determination that tribes adopt exclusionary standards of suitability for "primary management officials" and "key employees." *See* 25 U.S.C. § 2710(b)(2)(F) (made applicable to class III gaming at 25 U.S.C. § 2710(d)(1)(ii)). Those employees must meet criteria relating to the "public interest" and the effective regulation of "gaming." *Id.* at § 2710(b)(2)(F)(ii)(II).

In sum, Congress' concerns about organized crime and gaming industry integrity standards further demonstrate the interstate commerce nature of IGRA, and the error committed below in rejecting those factors.

IV. CONCLUSION

IGRA was enacted in part to address Congress' concern with issues that arise under its Interstate Commerce Clause authority. The Eleventh Circuit Court of Appeal's conclusion that respondent State of Florida is entitled to a judgment of dismissal because there was no exercise of that authority was in error and should be reversed, and the case remanded for further proceedings under IGRA.

Respectfully submitted,

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March 31, 1995

Appendix 1

TRIBAL-STATE COMPACT LIST

TRIBAL INFORMATION FOR THOSE WITH
APPROVED TRIBAL-STATE COMPACTS
AS OF JANUARY 26, 1995

98 TRIBES — 22 STATES — 114 COMPACTS
24 AMENDMENTS/ADDENDUMS

THIS LIST IS UPDATED AS NEW COMPACTS/AMENDMENTS ARE PUBLISHED IN THE FEDERAL REGISTER BY THE INDIAN GAMING MANAGEMENT STAFF, OFFICE OF THE COMMISSIONER, BUREAU OF INDIAN AFFAIRS, (202) 219-4068

* Tribe has compact(s) with more than one state.
** Tribe has more than one compact for different types of games.

Appendix 2

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

MAY 17, 1994
WASHINGTON, DC

PART 3

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF ADA E. DEER, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR,

Good Afternoon Mr. Chairman and members of the Committee, I am pleased to be here with you today to share with you the experiences of the Department of the Interior in administering provisions of the Indian Gaming Regulatory Act (IGRA). I am accompanied by Mr. John Duffy, Counselor to the Secretary, who will present the Department's testimony.

I do however, want to make some general comments on Indian gaming before Mr. Duffy offers the Department's testimony. The President's remarks in his historical meeting with the tribes, the follow-up Listening Conference and my 10 months as Assistant Secretary all make clear that tribe-owned gaming is an important economic development activity for Indian tribes.

In the States where Indian tribes and the States have worked together on a government-to-government basis, the objectives of the IGRA have begun to materialize to the benefit of both governments. Tribes have used gaming revenues to provide better governmental services for tribal members, better health care, higher quality education and employment. In several non-Indian communities tribal gaming has proven to be a catalyst for their revitalization. In those States that have refused to negotiate with tribes, the tribes' efforts at achieving economic stability and self-sufficiency have been effectively frustrated. Moreover, in some highly publicized conflicts, protracted and costly liti-

gation has resulted creating a major disincentive for tribes and States to work cooperatively.

Second, while at times tribes may feel overwhelmed and frustrated, I believe they have shown great determination, hope, and in most cases, willingness to work with the States to reach amicable resolutions.

Although the implementation of the IGRA has sometimes been contentious and difficult, overall our experience has been positive. To date we have approved 107 compacts, 12 amendments representing agreements between 90 tribes and 19 states.

In closing I want to say that we will continue to support Indian gaming as an important means of economic development. And, as Assistant Secretary, I am prepared to work with the tribes in their efforts to provide direction and leadership on this critical issue.

Thank you.

Appendix 3

INDIAN GAMING REGULATORY ACT

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BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
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ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

MAY 17, 1994
WASHINGTON, DC

PART 3

Deloitte &
Touche

A Historical Review of Gaming in the United States

April 26, 1994

NIGA

National Indian Gaming Association

Chairman
Rick Hill
Oneida Tribe of Indians

Vice Chairman
Daniel Tucker
Sycuan Band of Mission Indians

Treasurer
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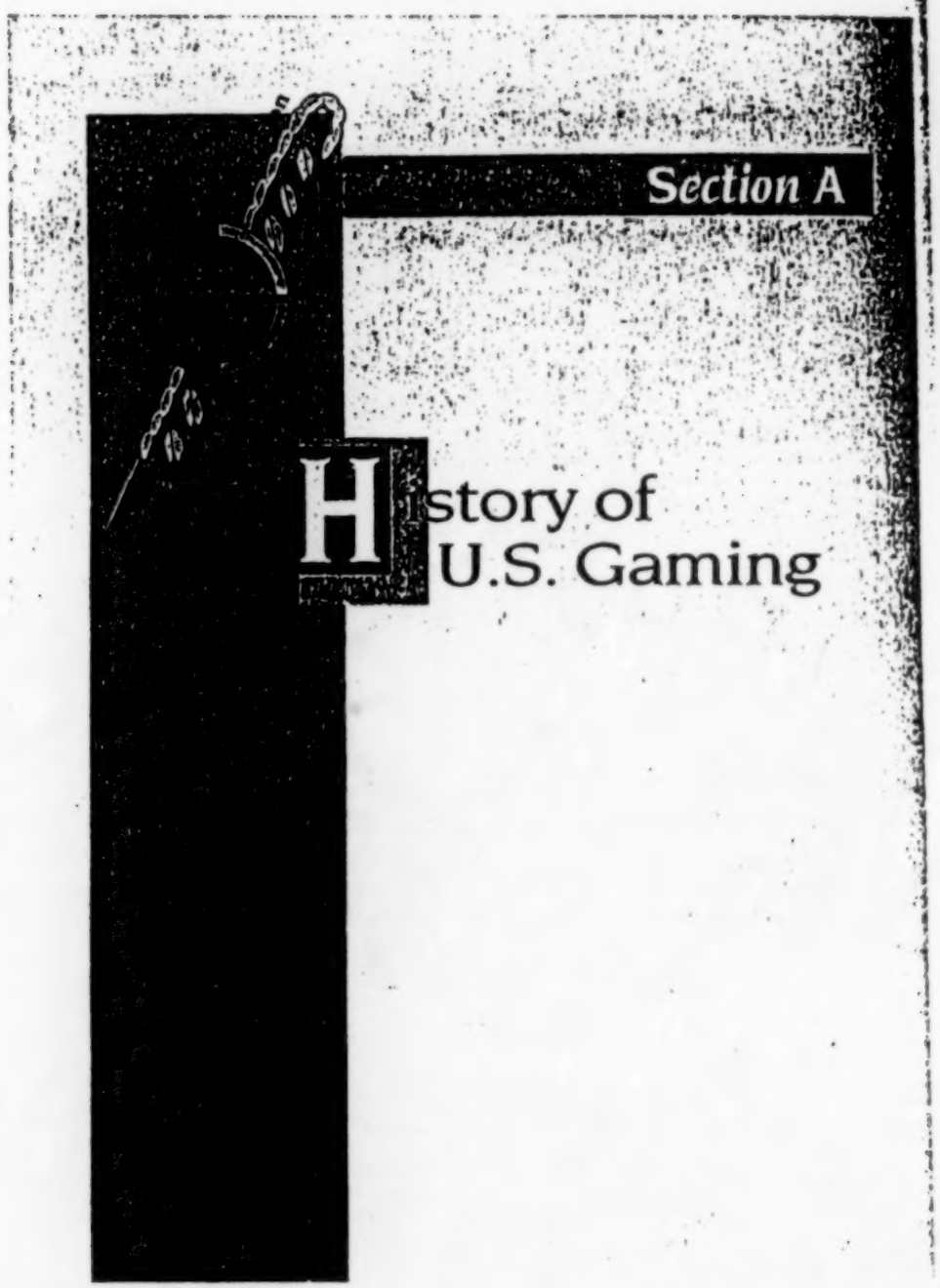


HISTORY OF US GAMING

Origins of U.S. Gaming

The United States is in what has been referred to as the "third wave" of legalized gaming, in that this is the third time that gaming, in one form or another, is available virtually everywhere in America. The first wave of gaming began in the colonial era and lasted through the Civil War. The second wave began after the Civil War and lasted through the early twentieth century when most forms of gaming throughout the U. S. were banned. The third wave began in 1964, with the passage of legislation legalizing a lottery in New Hampshire.

Lotteries dominated the first wave and were used to help finance the colonization of America. As such colonization took place, the popularity of the lotteries increased and they were used to finance projects too massive for traditional government or private financing sources. Institutes of higher learning such as Harvard and Princeton were financed in part from tax proceeds generated by lotteries.

The nation's first lotteries were considered respectable and not a form of gaming, but rather, a voluntary form of tax collection patronized by the most respectable citizens. By 1831, lotteries were sponsored by eight states and wagers exceeded $66 million, five times the annual federal budget. By the time the Civil War started, scandals and swindles plagued the lotteries and a wave of morality swept the nation. This soon led to the abolition of lotteries, and the first wave of legalized gaming receded.

The second wave of legalized gaming followed the Civil War. Lotteries made a comeback and other forms of gaming proliferated. This comeback was the strongest in the Reconstructed South as a means of dealing with the extreme financial difficulties that resulted from the war. Gaming also

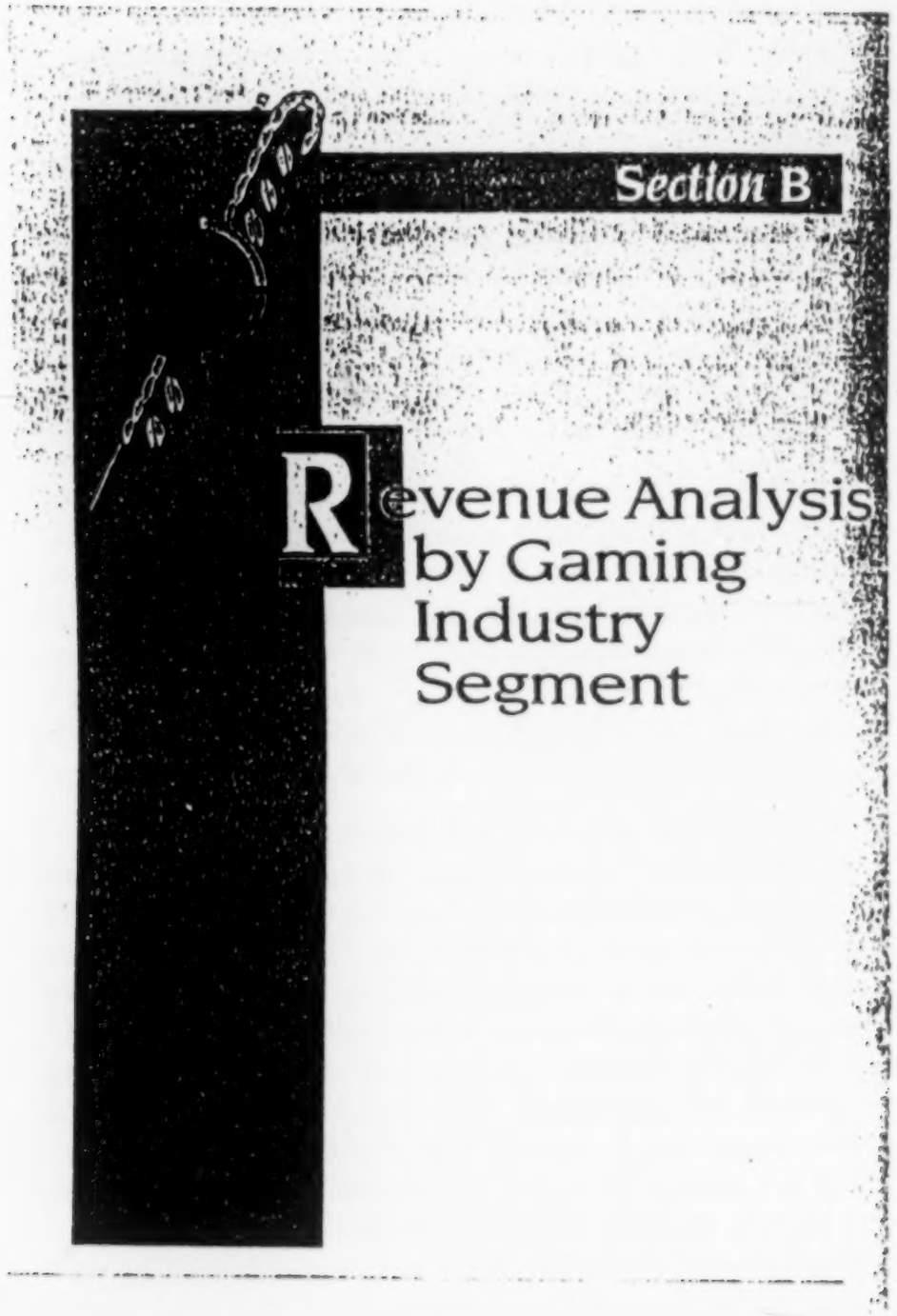
thrived in the frontier cities of the West and in most major urban areas.

During the 1840s and 1850s, the gold and silver strikes in California and Nevada caused an influx of miners and others into those territories. Gaming became an integral part of the boomtown atmosphere. Gaming also thrived in the cities of San Francisco, Kansas City and Denver, all of which were known as gaming capitals in the 1850s. During this period, anti-gaming legislation was passed but was not effective and only served to drive gaming underground where it was tolerated if not supported by law enforcement officials.

However, the second wave did not persist, and by 1910, the year Nevada banned casinos, legal gaming was virtually non-existent in the U.S. By the 1930's casinos had returned to Nevada and horse race wagering had returned to twenty-one states. Lotteries were not legalized again until 1964 when such activity was legalized in New Hampshire, and, according to some experts, this ushered in the third wave of legalized gaming in America.

Despite a weak economy the gaming industry in the U.S. has exhibited an impressive growth rate. The morality argument has lessened as governments and churches become big players. The industry has become a huge economic and social force. Players are demanding faster and easier games. This fundamental value shift is currently changing the form gaming takes across the country. Gaming is legal in one form or another in every state (including the District of Columbia) except Utah and Hawaii. Land based casino gaming (including casinos on Indian Reservations) is offered in 20 states. In addition, Indian tribes in Florida and New Mexico operate electronic games such as video poker without compacts because the states have refused to negotiate with the tribes. Excursion boat (riverboat gaming) is legal in Illinois, Indiana, Iowa, Louisiana, Missouri, and Mississippi. Every other state with a major waterway, or

lake is considering riverboat gaming. 38 states (including Washington D.C.) permit lotteries and remaining jurisdictions where gaming is legal offer various forms of pari-mutuel wagering.



REVENUE ANALYSIS BY GAMING INDUSTRY SEGMENT

1992 gaming revenues or win exceeded $29.9 billion a volume that would rank 19th in the Forbes Sales 500, ahead of American Express ($26.96 billion) and behind Boeing ($30.184 billion). Lotteries and casinos dominate the US legal gaming industry accounting for approximately 38% and 34% respectively, of total 1992 gaming revenues. Pari-mutuels are next in revenue market share at approximately 12%. Indian Reservation gaming accounts for 5% of revenue market share. Charitable games, bingo, card rooms, and legal bookmaking account for the remaining 11% of market share (see exhibit B).

Consumer preference for higher priced lottery games, continued interest in OTB and slot machines over lower priced alternatives such as race tracks and table games changed the composition of gross gaming revenue. This also increased the average consumer price of gaming from 8.77% of handle in 1991 to 9.07%.

Gross gaming revenue comprised .592% of US personal income versus .552% in 1991. Consumer expenditures (losses) on legal gaming were 6 times greater than the $4.9 billion Americans spent on box office receipts.

Indian Reservation Gaming

Class III Indian Reservation gaming experienced significant growth in revenues. Revenues totaled $1.07 billion, with an estimated (256%) or $769 million increase since 1991. When combined with Class II revenues, mostly bingo, the gross gaming revenue totaled $1.5 billion producing an overall gain in revenues of 108%, or $779 million. Exhibit C clearly illustrates the growth in Indian gaming since the passage of the Indian Gaming Regulatory Act (IGRA) in 1988. Although Indian gaming revenues are increasing at a tremendous pace, Indian gaming revenues are still a small

percentage of total gaming revenues. Exhibits A & B illustrate market shares for 1991 and 1992. Exhibit D clearly shows that the size of Indian gaming revenues is still small as compared to total gaming revenues (comprising 5% of total revenues).

There has been some confusion about the actual scale of Indian Gaming. A widely talked about figure of $6 billion was publicized. "Gaming and Wagering Business" magazine attributes this projection to a possible misunderstanding regarding gambling terminology. Indian casinos win 18% of drop. Therefore, a $6 billion drop would equate to a $1.08 billion win which is in line with the original estimate.

Casinos

Casinos won $11.2 billion an increase of $1.1 billion since 1991. Class III Indian Gaming the majority which is generated by casino games comprised $1.1 billion of the total casino revenues. However, lotteries still comprised the largest share (38.3%) of the pie but not by a significant amount.

Slot machines in Nevada and New Jersey, cruise ships, riverboats and land based casinos were all strong performers. The tend in the mix of casino gaming is moving away from table games to higher margin slot machines. Slot machines represented 47% of total Nevada and New Jersey casino gaming revenues in 1982 versus 65% or $5.83 billion in 1992.

Lotteries

There have been many changes in the lottery market. It is now comprised of three primary venues: traditional state number games, instant games, and video lottery terminals. Since its reintroduction into the US in 1964, the state lottery has been the engine that has powered the resurgence of legal gaming:

- 38 states including Washington DC permit state lotteries.
- Lotteries are available to more than 80% of the US population.
- Thus far, lotteries have been economically successful and relatively free of scandal popularizing and sanitizing the game in general.

Aggregate gross revenues from lotteries reached $11.5 billion, a record 12% increase, a $1.2 billion increase from 1991.

Texas, Georgia, and Nebraska began lotteries in 1992-3. The successful start of lottery operation in Texas generated a first year handle which topped $1 billion.

The traditional lottery market is approaching maturity. Lotteries are diversifying their product lines. The continued success is highly dependent upon aggressively marketing lottery games and stimulating the market by diversifying their product lines.

Video poker and keno will play a key role in the future of lotteries. Video lottery revenues were up 99% or $120.4 million in 1992.

Non-Bingo charitable games

Non-bingo charitable games include pulltabs, punchboards, raffles, low-stakes blackjack and other card and dice

games. Gross revenues increased by 4.5% or $55.6 million to a total of $1.3 billion.

Bingo

Gross revenues from non-Indian bingo halls increased 2.2% to $1.09 billion. This revenue figure is an estimated figure based on the reported revenues. Each state has different laws regarding the reporting requirements and therefore it is probable that there are instances where revenues have not been reported.

Industry experts believe this market has matured. However, bingo players stay extremely loyal to their game.

Pari-Mutuels

Pari-mutuel wagering is generally considered to include on-track, off-track, and inter-track betting on horse racing, dog racing and Jai-alai. Currently, some form of pari-mutuel wagering is authorized in all the U.S. states except Alaska, Georgia, Hawaii, North Carolina, South Carolina, Utah, and the District of Columbia. All of the states with pari-mutuel wagering have some form of horse racing, approximately 17 states have greyhound racing, and Jai-alai wagering is in operation in just three states, Florida, Rhode Island and Connecticut. Pari-mutuel wagering accounted for 12% of total US gaming revenues in 1992. Gross pari-mutuel revenue rose slightly (.4%) by $16.1 million to $3.7 billion.

Major innovations in the industry have been off-track betting, inter track betting and simulcasting races to other venues, such as casinos. Off-track horse revenues increased by 12.8% to $110.2 M. Off-track betting comprises 33% of the industry's revenues and the share continues to rise. These innovations have made pari-mutuel wagering more accessible to bettors, however several studies have shown that the main effect has been to increase the amount wagered by existing patrons versus attracting new attendees.

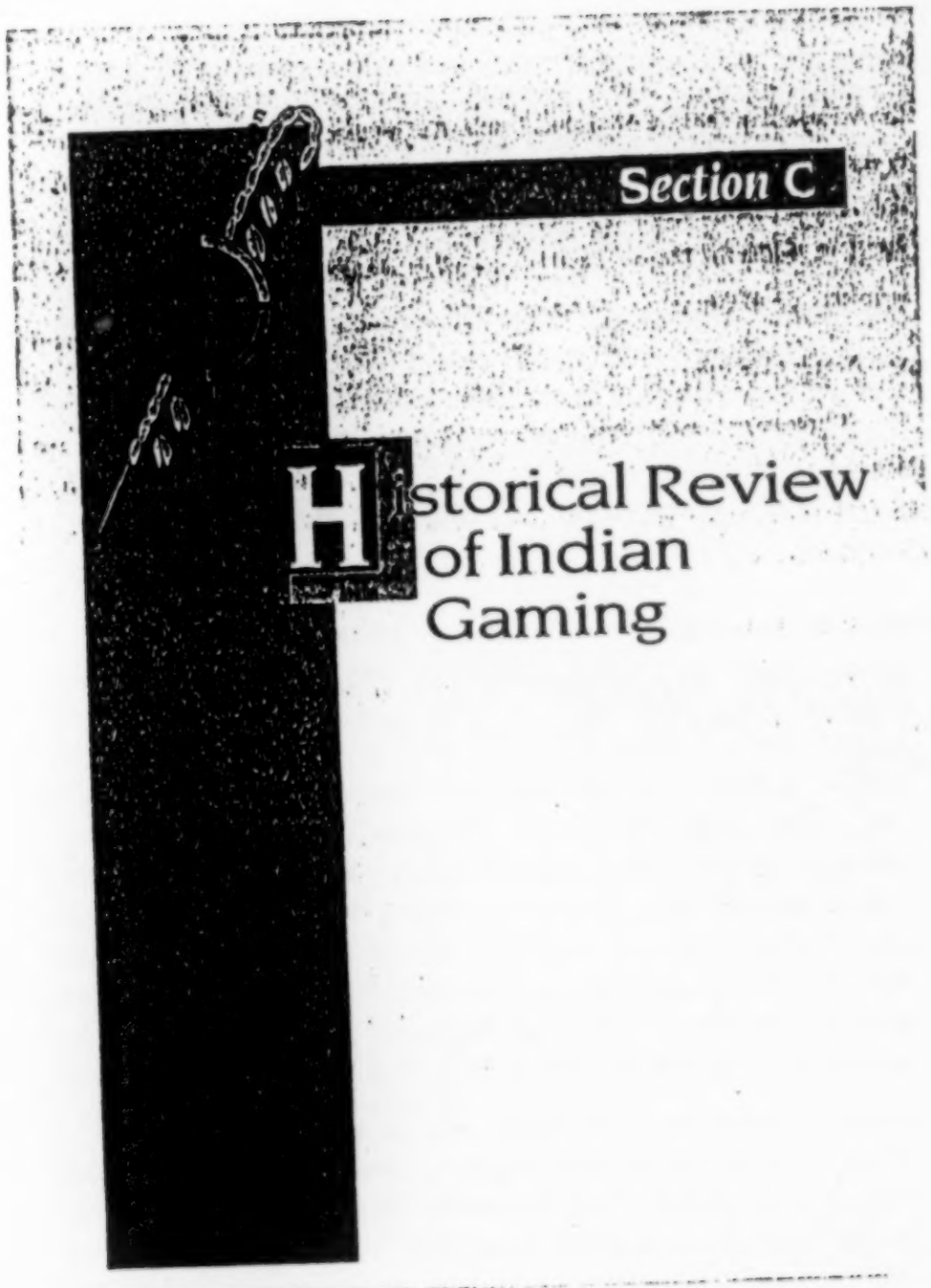
The pari-mutuel industry has been losing its share to other gaming industry segments and experienced low growth in total revenues from 1982-1992 (exhibit E). The pari-mutuel industry will require new and creative marketing approaches to hold their share of the market.

Non-Nevada Cardrooms

Cardroom revenues increased slightly in 1992, by less than $1.7 million, to $661 million. Most of these operations are small but there are many. There are approximately 300 in California alone. However, revenues in those California cardrooms have stabilized in 1992. Poker-like versions of pai-gow and super pan-nine and similar games are the major attractions.

Legal Bookmaking

This market share appears to have matured. Sports bets fell $9.98 million in 1992 to a three year low of $97.4 million.



HISTORICAL REVIEW OF INDIAN GAMING

Introduction

American Indian Nations embrace a distinct culture, language and spirit. Casino gaming has been referred to many as the "return of the buffalo". The buffalo was used by the American Indian people for total subsistence, food, shelter, clothing, children's games, and trading.

Gaming has replaced the buffalo as the mechanism used by American Indian people for survival. Today, the proceeds from gaming are used by Indian Nations for subsistence, cultural preservation, and to replenish impoverished economies. Not surprisingly, the spread of Indian Gaming has spurred controversy. As Indian casinos became more successful, competitors have lodged charges of unfair advantages and organized crime infiltration. During a 1992 Senate hearing on Indian Gaming, Paul Maloney, senior counsel at the Department of Justice, testified that a special investigation uncovered no evidence of organized crime infiltrating Indian gaming. In all cases of crime or robbery, Tribal governments have brought the crime to justice. Opponents accuse Indians of exploitation; that they are using gaming as a means to provide short-term financial growth and enormous benefits. Proponents refer to the intent of IGRA when allegations of exploitation are raised.

The primary intent of IGRA is to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self sufficiency, and strong tribal governments". Under IGRA, all revenues from gaming operations are required to be used solely for governmental or charitable purposes. Gaming revenues are used to build infrastructure, schools, hospitals, roads, sewers, and water systems and to fund health care and education.

Many reservations do not have sufficient resources and are located in undesirable regions that cannot support devel-

opment. These tribes have become dependent on federal aid, as attempts at economic development have failed prior to the advent of Indian gaming.

Government aid provided to Indians often result in benefiting local communities. This is due to the fact that there is a scarcity of Indian businesses and high unemployment, sometimes as high as 80%. A significant portion of the federal dollars are therefore spent outside the reservation.

The lack of a vital economy on reservations makes it nearly impossible to improve tribal conditions. This hopeless environment and constant struggle help to explain the high incidence of alcoholism and suicide, and the lack of adequate health care in many tribal communities. According to the 1990 Census, the poorest counties in the United States are located on Indian Reservations. There are also 3,200 counties in the United States. Of the Poorest 1% (32 counties), 7 are located on Sioux reservations in South and North Dakota. In addition, several other Indian Reservations in various counties in the United States were also listed amongst the 32 poorest counties.

More recently, gaming has enabled a few tribes to improve their situations considerably. The profits are used to build road and water systems and healthcare centers, provide job training scholarships and both home and business loans to tribal members. More tribes will benefit from gaming with the proliferation of Indian gaming operations. Currently, there are 547 tribes of which only 79 (14.4%) have Class III gaming.

Legislative and Regulatory Issues

Indian Tribes are sovereign governments. They have existed as sovereign governments long before Europeans settled in North America. Treaties signed with settlers in exchange for land guaranteed the tribes continued ability to be recognized and treated as sovereign entities. However,

historically state governments have been hostile in recognizing Indian Tribes as independent entities.

Under the constitution of the United States, the federal government is obliged to protect tribes from states, who have often coveted the Indian's lands and assets, and sought to impose power over Indian tribes and people.

Several landmark court cases have confirmed this recognition of Indian sovereignty. These court cases include, *Cherokee vs. Georgia, 1831,* and *California v. Cabazon, 1987.* The Indian Gaming Regulatory Act (IGRA), passed by Congress in 1988, affirms that tribes have the power to conduct gaming on Indian lands subject to tribal/state jurisdiction.

Indian Gaming was conducted on many reservations throughout the US prior to the passage of Indian Gaming Regulatory Act (IGRA). This legislation was passed in response to a 1987 federal court decision "California versus Cabazon" which stated that tribes could engage in forms of gambling that were not expressly prohibited by the state in which the tribe is located. The "California versus Cabazon" case and US supreme court finalized the distinction in which the court applied a criminal/prohibitory — civil/regulatory distinction. In other words, if a state regulates gaming, in any form, then gaming falls under civil law for which Indian nations cannot be prosecuted and the state is obligated under federal law to enter into compact negotiations with the tribe. If a form of gambling sought by a tribe is expressly prohibited by the state under criminal law, then the state can refuse negotiations for particular games on that basis. The Cabazon case solidified issues surrounding gaming on tribal lands which had previously been questioned.

The purpose of IGRA was to create a balance between the tribe's right to conduct gaming on their reservations and the public interests of the states in which the tribes are

located. IGRA became effective on October 17, 1988. The goals of the act include tribal economic development, self-sufficiency and a strong tribal government. The act provides a framework by which the games are conducted to protect both the tribes and the state. The act created three classes of gaming and allocated regulatory jurisdiction over each class among tribal, federal, and state sovereigns.

- Class I — includes social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals and is subject to exclusive tribal regulatory jurisdiction.
- Class II — includes all forms of bingo and other games similar to bingo, such as pull-tabs and punch-boards (electronic or non-electronic), provided these are played in the same location as bingo games. Class II also refers to non-banking games that either expressly allowed or not expressly prohibited by state law and banking card games in existence in the specified states of Michigan, North Dakota, South Dakota, Montana, and Washington State on or before May 1, 1988. Class II gaming is subject to tribal regulatory jurisdiction, with extensive oversight by the National Indian Gaming Commission (NIGC).
- Class III — includes all forms of gaming that are not Class I or II, including slots, casino games, banking card games, horse and dog racing, pari-mutuel wagering and jai-alai. Class III gaming is lawful on Indian lands only if the gaming has been authorized by a tribal ordinance approved by the chairperson of the NIGC and such gaming is permitted by the state for any purpose by any person, organization, or entity, and is conducted in conformance with a tribal-state compact entered into by the tribe and the state that is in effect. The tribal-state compact entered into by the tribe was proposed by the Nevada congressional delegation on

behalf of the states. The jurisdiction over class III gaming is left to the tribal-state compact negotiation.

The sovereignty of American Indian tribes was limited by IGRA which required a tribe to negotiate a compact with the state. Under IGRA, a tribe must request a state to enter into compact negotiations. Once a request is made, the state has an obligation to negotiate in "good faith" to enter into a compact. The compact must also be approved by the Secretary of the Interior. Jurisdiction is provided to the federal district court concerning the following:

- Any cause of action by a tribe arising from a state's failure to conduct negotiations in good faith.
- An action by a state or a tribe to enjoin any class III activity conducted in violation of the compact.
- Any cause of action initiated by the Secretary of the Interior to enforce the Secretary's authority under IGRA to enforce mediation procedures.

Today, there have been law suits because some states have failed to live up to IGRA and negotiate in "good faith" with tribes. There have been a number of landmark cases prompted by the proliferation of Indian Gaming. These cases have clarified gaming issues that IGRA addressed. Some of the major cases are summarized below:

Mashantucket Pequot Tribe versus
State of Connecticut, 1991

This decision involved the first interpretation of IGRA. The tribe filed suit in accordance with IGRA requiring the state of Connecticut to negotiate terms for operating games of chance on its reservation. The state agreed that "its limited authorization of the conduct of Las Vegas nights by nonprofit organizations does not amount to a general allowance of such (casino-style) gaming as the tribe would institute, and further that such gaming activity is contrary to

the State's public policy." The court determined that the issue was whether the form of gaming sought by the tribe violated the State's public policy.

The court reiterated what was stated in the Cabazon case. "If the intent of state law is generally to prohibit certain conduct, it falls within the areas of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory."

The court reasoned that since the state permits certain casino style games at charity events, the Mashantuckets use was within the meaning of IGRA, and not against public policy of the state. The court held that the state was required to enter into a compact with the Pequot tribe and that the games conducted in Las Vegas nights were subject to negotiations as were the rules of conduct for these games.

Lac Du Flambeau Band of Lake Superior Chippewa Indians Versus Wisconsin, 1991

In this case the tribe filed suit against the state under IGRA because the state failed to negotiate in good faith for a gaming compact. The court concluded that "the state is required to negotiate with the plaintiffs over the inclusion in a tribal state compact of any activity that includes the element of prize, chance, and consideration and that is not prohibited expressly by the Wisconsin Constitution. The state is required to negotiate casino games such as video, slot machines, and blackjack with the tribes because the activities are permitted under Wisconsin law within the meaning of IGRA."

The Cabazon case finalized the legal distinction between criminal/prohibitory and civil/regulatory. In this case it was determined that Wisconsin's gaming structure was regulatory in nature. The central issue in this case was whether the state "expressly permits" the type of gaming which the tribe

was seeking to conduct. The Federal court said that the "inquiry" is whether Wisconsin *prohibits* those particular gaming activities. It does not."

Seminole Tribe of Florida vs. Lawton Chiles, Governor of the State of Florida, 1994

This case was first filed in the Southern District of Florida on September 19, 1991. The Seminole Tribe brought suit against Lawton Chiles, Governor of Florida, to remediate the alleged failure of the State of Florida to conduct good faith negotiations for the tribe to establish gaming operations on their land. The State of Florida dismissed the claims on two grounds, 1) Gaming activities proposed by the Seminole Tribe are not conducted in the State of Florida. 2) Pursuant to the Eleventh Amendment, Congress does not have the constitutional power to enforce "good faith" requirement of the compact process by explicitly providing the Tribe a judicial remedy against the state.

On June 18, 1992, the final ruling sided with the Seminole tribe. The Florida Federal Judge ruled that the Eleventh Amendment was not a justifiable defense by the states. The Tribe's central argument against Florida's rebuttal was that IGRA abrogated the State's immunity when it enacted IGRA. This ruling was important in that it found that Congress has the power to abrogate State immunity. Subsequently, interlocutory appeal ensued. The appeal resulted in a finding that Congress did not have the power to abrogate state immunity, but the tribes should have remedy in "bad faith" cases. Therefore, the Secretary of the Interior was directed to implement procedures for the tribes in lieu of a compact with the states.

The State's Use of the 10th and 11th Amendments

Congress included a provision in IGRA that the states and tribes negotiate a compact for those games being

considered by the tribe. The states have responded to IGRA by using the 10th and 11th amendments to block the establishment of Indian Gaming Facilities. The state's basic strategy is to refuse to negotiate all or certain kinds of Class III games (such as slot machines, card games, pari-mutuel racing etc.). If a tribe feels the state has failed to negotiate in good faith, IGRA says that the tribe can sue the state for failure to negotiate.

The states have been using the 10th amendment as a defense because it reads the powers not delegated to the federal government by the constitution are reserved for individual state governments. The state therefore cannot be compelled by the federal government to act on anything that is not stated in the constitution. This is disputed by the tribes.

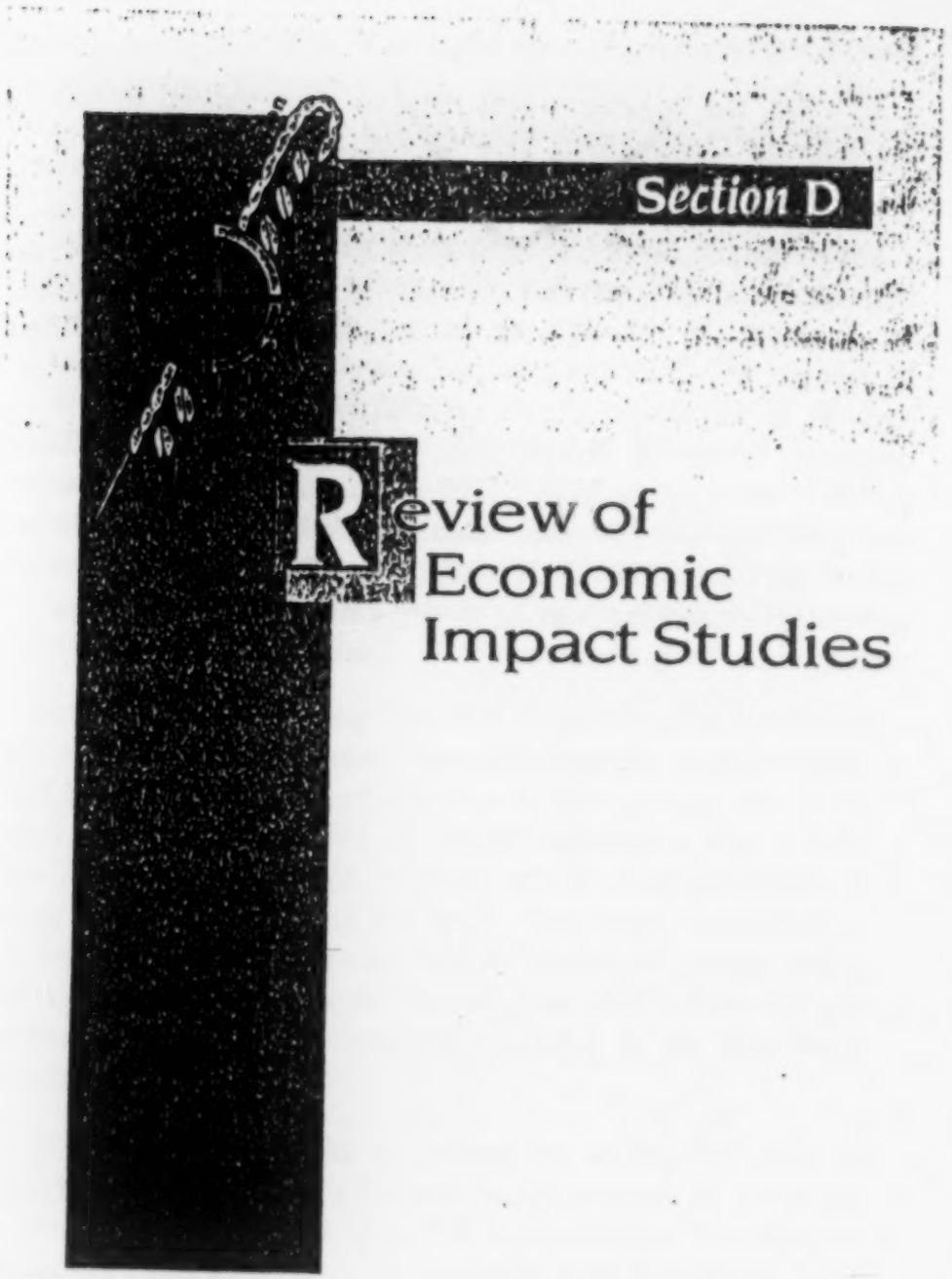
States have been using the 11th amendment as a defense when tribes file suit against them for allegedly negotiating in bad faith. The 11th amendment says that a state cannot be sued by individuals based on federal legislation, that a state has immunity from such lawsuits unless congress makes it clear that immunity does not apply. One response according to Jerry Strauss, an attorney representative for several tribes is "Congress has the power to abrogate state immunity and nobody disputes that Congress intended to do that when writing IGRA."

When the tribe seeks an appeal by taking the state to court the state dismisses the suit on the grounds of sovereign immunity as defined in the 11th amendment. The amendment bars suit by individuals against a state to enforce rights conferred by federal legislation, in the absence of clear congressional intent to authorize such suits.

Recent Agreements

In 1993, the Mashantucket Pequots tribe agreed to pay the state of Connecticut 25% of slot machine revenue in return for a monopoly on slots.

On April 25, 1994 Governor Weicker Jr. settled the Mohegan's land claims in exchange for permission to operate a casino. In this new agreement, the Pequots and the Mohegans will share the gaming business. The new compact extends to all casino games in return for $160 million in payments from the tribes. This agreement could be dissolved if the legislature legalizes not just slot machines, but any gambling off the reservation. If the agreement is dissolved the state would be forfeiting the tribes' millions. This agreement raised the barrier to any gaming company other than Indians to operate casinos in Connecticut.



REVIEW OF ECONOMIC IMPACT STUDIES

Introduction

There have been several studies which show the positive effects of Indian Gaming on reservations and the economy. The Indian Casinos stimulate economic growth due to direct and indirect impacts. For example, direct impacts are the wages paid to employees as well as the purchases from suppliers. For purposes of illustration, let us review the economic impact of the wages paid to employees of the casino. The casino employees have the means to consume and they will therefore spend a portion of their payroll on goods and services both on and off the reservation. The producers of these goods now have extra incomes and they will in turn spend a portion of their income. This process will continue. Thus an endless chain of secondary consumption and respending is set in motion by the primary investment (in this example the casino employees' wages.) This is what is referred to as the multiplier effect. Spending stimulates additional or induced spending in addition to employment. There are other positive economic effects such as decrease in unemployment and public assistance expenditures.

Although different methodologies have been used there are a number of common findings which are revealed in a majority of the studies:

- Increases in tribal revenues to support Indian government services, economic development, and self-sufficiency
- Increases in employment (Indian and non-Indian)
- Reduction in public assistance expenditures
- Creation of induced spending and induced employment
- Increases in the number of out-of-state visitors which stimulates visitor spending
- Increases in tax revenues

- Decrease in crime rates.

These studies also prove that the Gaming operations not only benefit the Indian community but the surrounding regions as well. As will be explained in several of the studies, more often than not the casinos employ a higher percentage of Non-Indian employees. An estimated 78% of casino gaming employees are non-Indians.

The following studies have been reviewed and the key findings will be highlighted in this report:

- The Economic Impact of Sycuan Gaming Center on East San Diego County — prepared by McGladrey & Pullen CPA's and Consultants
- Economic Benefits of Tribal Gaming in Minnesota — prepared by KPMG Peat Marwick
- The Economic and Fiscal Impact of American Indian Gaming on the Government of the State of Wisconsin — prepared by James Murray, Ph.D.
- The Economic and Fiscal Impact of Indian Reservation Gaming in New Mexico — prepared by Center for Applied Research
- The Economic and Social Effects of Indian-Owned Gaming Enterprises in Michigan — prepared by University Associates
- The Economic Impacts of Foxwoods High Stakes Bingo & Casino on New London County and surrounding areas — prepared by Arthur Wright and Associates

Key Findings

The Economic Impact of the Sycuan Gaming Center on East San Diego County

Although there has been a recession in San Diego County, the Sycuan Gaming Center has experienced tre-

mendous growth. It has impacted the local economy by creating more than 2,100 jobs in 1993 and generated total spending of nearly $70 Million.

The population of the Sycuan is only 100 people. The tribe has operated a gaming operation since 1983 starting with bingo, then adding card games, OTB and video pull tab machines. In 1990 a 67,000 square foot Las Vegas style casino was built for $3.5 million and then expanded in 1992 for $500 thousand.

There have been positive benefits to the tribe such as no reliance on public assistance for the last six years. The tribe has improved the infrastructure and also invested in non-gaming related ventures to gain long-term economic self-sufficiency. Proceeds from the gaming center have funded the following tribal operations:

- Medical and dental clinic for tribal members and all employees including Non-Indians
- Pharmacy
- Day Care Center
- Chapel
- Ambulance Service
- Library
- Police department
- Fire Department
- Automotive Shop
- Human Resources department
- Tribal administrative offices

Gaming revenues have continued to increase significantly. Gaming revenues include revenues from bingo, pull tabs, card games, off-track betting, and restaurant and concessions. In 1990, the expansion of the facility allowed for the inclusion of card games, which is the largest source of

gaming revenues (53.3% of total revenues). Total gaming revenues increased 28% from $34.0 million in 1992 to an estimated $43.6 million in 1993.

The largest expenditures for the gaming operation are operating expenses which totaled $22.1 million in 1993 and the payroll and payroll taxes which totaled $9.7 million in 1993. Other capital expenditures related to the gaming center totaled $2.2 million. Total expenditures in 1993 were $34.0 million.

The revenues less the total expenditures totaled $5.4 million in 1992 and $9.6 million in 1993. These amounts are referred to as "Proceeds" and IGRA requires that proceeds be used for the general welfare of tribal members, promoting economic development, funding tribal government and local charitable donations.

The following table summarizes the tribes use of proceeds:

Use of Proceeds	1992	1993
Tribal Government	$ 651,000	$1,089,000
Education and Human Services	3,048,000	3,153,000
Per Capita and Direct Services	804,000	930,000
Capital expenses and investments	929,000	4,428,000
Total	$5,432,000	$9,600,000

According to the San Diego Business Journal, the Sycuan Band is the second largest employer in East San Diego County with 851 employees in 1993. It is interesting to note that 90% of those employed by the Gaming Center and tribal operation are non-Indian.

The economic impact from the Sycuan Gaming Center and Tribal Operations was $38.6 million for direct expenditures and $31.3 million for induced expenditures resulting in a total economic impact of $69.9 million.

Economic Benefits of Tribal Gaming in Minnesota

The state of Minnesota entered into video games of chance compacts with 11 tribes between October 20, 1989 and the spring of 1991. The state also entered into blackjack compacts with 11 tribes between May and August of 1991.

Tribal gaming has resulted in an estimated total of 37,575 jobs from both direct and induced employment. Of this total 9,975 persons are employed directly by the tribal gaming facility. Indians and non-Indians benefit from the gaming facility. Indians hold 27% of the jobs and non-Indians hold 73% of the new jobs. The tribal gaming employment was compared to other employers and it ranked as one of the largest employers in Minnesota. According to a study conducted by the Minnesota Planning Agency 20,000 indirect employment jobs are being supported by tribal gaming and 7,600 could be supported by tourism expenditures.

The state has also reduced Public Assistance spending. The number of Aid to Families with Dependent Children (AFDC) recipients has decreased by 14% between 1987 and 1992 in 8 non-urban counties with tribal gaming whereas the statewide number of recipients increased 17% for the same period.

Gaming revenues increased 173% from 1991 to 1992 totaling $390 million. Video games comprised the largest share (74.7%) of total revenues.

The largest expenditures were payroll totaling $116.9 million and operations-related totaling $106 million. The revenue less the operating expenses yielded available proceeds of $167 million. In accordance with IGRA the tribe utilized proceeds as summarized below.

Use of Proceeds	1992
Direct services	$39.5 million
Human services and education	4 million
Charitable contributions	.8 million
General Gov. and trusts	13.4 million
Management fees	8.3 million
Capital expenditure enterprise	32 million
Capital expenditure infrastructure	6.5 million
Housing	17.3 million
Investments and unallocated	45.2 million
Total	$167 million

The Economic Impact of American Indian Gaming on the Government of the State of Wisconsin

There are currently 15 Class III gaming facilities owned by American Indian tribes in the State of Wisconsin. This study released in 1993 showed the dramatic benefits that Indian Gaming has had on the state of Wisconsin. The benefits to the state of Wisconsin from welfare savings, gas taxes, income taxes and sales taxes were estimated at $51.7 million. These savings are summarized as follows:

Savings	1992
Welfare Savings	$2.2 million
Gas Taxes	$14.2 million
Sales Taxes	$17.3 million
Income Taxes	$18 million
Total	$51.7 million

These estimates were derived by reviewing current employment data and historical welfare and unemployment statistics. An estimated 30,000 jobs are directly or indirectly supported by Indian Gaming Facilities. Of this total, 4,500 persons were employed directly by the gaming facility. Approximately, 5,500 jobs were created in construction, supplier firms, and from non-gaming visitor spending. The remaining 20,000 jobs were indirectly supported by the gaming facilities. The estimated tax liability as highlighted above is $18 million.

The study also reviewed the reduction in welfare benefit costs resulting from the employment of former welfare recipients by the gaming facilities. A survey of employees of the American Indian gaming facilities revealed that 820 of those employed in 1992 had been welfare recipients prior to joining the operation. Using the average payments it was estimated that a total of $1.6 million in payments was saved by the state and approximately $1.4 million was saved by the federal government.

There were also approximately 205 Indians receiving Relief for Needy Indian Person (RNIP) benefits prior to joining the gaming operation. The average RNIP benefit in 1992 was $2,676 resulting in a total savings of $548,580 in this program because of direct gaming employment.

As stated in the table above, there was also significant tax revenue generated from sales associated with the operation of the gaming facility. Total sales tax and gas tax collections from sales associated with facility exceeded $32 million in 1992.

This study also reviewed crime rates and found that crime rates were actually lower in those communities with gaming facilities. The total number of offenses in rural counties increased by approximately 11 percent, the increase in casino counties was less than 5% while the increase in non-

casino rural counties was over 12%. These statistics do not support the contention that costs are being incurred in casino counties due to higher crime rates associated with Indian gaming facilities. Moreover, this does not reflect the thousands of enforcement hours provided at no federal or state costs by the tribally funded officers and departments.

The Economic and Fiscal Impact of Indian Reservation Gaming in New Mexico

This study reviewed the operations of 10 tribes which comprise all Indian gaming enterprises in New Mexico.

The study focused on three dimensions to determine the economic impact of gaming.

- The wage and salary income of employees at all reservation gaming enterprises was identified. A portion (60%) of the wage and salary income of gaming operation employee was assumed to be expended in the state economy.
- The value of expenditures that are made by tribal gaming operations for supplies, utilities, equipment, etc. was identified.
- The tourism expenditures related to gaming were also determined. The tourism expenditure patterns were primarily based on the All Indian Pueblo Council Report, "The Economic and Fiscal Impact of American Indian Reservations in New Mexico." (October 10, 1993)

The principal source of data was a tribe by tribe survey which described number of jobs, salary payments, etc. Economic and taxation assumptions were taken from economic models developed for the All Indian Pueblo Council by the Center for Applied Research.

Economic Impact attributed to Indian Gaming Operation Employees

The Indian Reservation gaming operation directly supports 597 jobs and accounts for induced employment of 176 job holders state wide. This results in a total salary and wage income impact of $6.9 million.

Economic Impacts attributed to Tribal Government Expenditures

The expenditures for gaming operations supplies, goods and services created 879 jobs state-wide and $20.1 million in wage and salary income.

Economic Impacts of tourism attributed to Indian Reservation Gaming

The tourist expenditures account of 3,332 jobs and $65.6 million salary and wage income statewide.

The following table summarizes the economic impacts discussed above:

Basis of Impact	Amount
Total Income - Gaming Operation Employees	$ 6,935,509
Total Income - Expenditures for Operations	$20,149,451
Total Income - Tourism Expenditures	$38,530,608
Total	$65,615,568

Fiscal Impacts of Indian Gaming

The key assumption forming the basis for tribal government expenditures is that gaming enterprises obtain at least 90% of the goods, services and supplies for their operations in state. The gaming operations are directly and indirectly contributing $1.4 million in tax revenue.

The Economic Impact of Michigan's Indian Gaming Enterprises

This study compiled information from all seven Michigan tribes. There are eight separate gaming enterprises which include casino and bingo operations. Some of the tribes operate businesses to serve customers including restaurants, hotels, and gift shops.

In August 1993, a total of 2,681 people were employed by Michigan gaming facilities. Of these 52% were Native Americans and 48% were non-Indians. Of those employed 49% were welfare recipients and 44% were unemployed prior to joining the gaming facility operations. All of the facilities rank among the top eight employers in their respective counties. Employment of tribal members has substantially increased. On average, tribal unemployment rates decreased 77% as a result of the availability of on reservation employment.

The economic benefits were quite significant. The eight tribes paid a total of $5.7 million in state and federal taxes. The seven tribes reported total revenues of $70.7 million. Gaming payrolls totaled $19.7 million in 1992. The gaming enterprises spent a total of $14.5 million on goods and services.

These facilities continue to flourish as evidenced by the growth from 1992 to 1993 in several key areas. The number of employees has increased by 40%, taxes paid increased by 5%, total receipts increased by 70%, payroll increased by 46% and expenditures on goods and services increased by 84%.

The Economic Impacts of the Foxwoods High Stakes Bingo and Casino on New London County and Surrounding Areas

This study focused on 3 economic impacts of the Foxwoods High Stakes Bingo and Casino, Employment and earnings, AFDC impact, and Real value of housing.

I. Employment and earnings summary

The Foxwoods High Stakes Bingo and Casino, owned by the Mashantucket Pequot Tribe, opened in early 1992. This opening created 6,000 new jobs and is expected to increase to 9,500 in 1994. The average gross pay of casino employees is approximately $25,000 a year plus $9,300 for fringe benefits. The salaries for casino employees are on average, $2,100 more than average New London County salaries before February 1992. Due to increased economic activity, new indirect (non-casino) jobs will also be created. Applying economic impact analysis, the study showed that each new Foxwoods job, supported 1,107 additional non-casino jobs in New London County. Therefore, the combined effect of the 9,500 jobs is a total of 20,017 new jobs. The total associated payroll is estimated to be $478.5 million per year. This analysis also determined that each new Foxwoods job, supported 0.74 additional non-casino jobs in the rest of Connecticut. This translates into more than 7,000 new jobs, with an annual payroll of more than $214 million. Overall, employment created by the opening of the Foxwoods High Stakes Bingo and Casino have a significant correlation to creating jobs in all of Connecticut.

II. AFDC Impact

Using economic methods, this study determined that each new job trims 0.154-0.26 recipients from AFDC (Aid for Dependent Children) rolls. The correlation was also determined that when the economy is more robust, these figures increase. When the economy is more depressed, these figures tend to drop.

To estimate the total savings from the drop in recipients who receive AFDC, it was assumed that a conservative AFDC payment is $200 per month and 26,000 direct and indirect jobs will be created. The total estimated savings would range from $9.61 million to $16.20 million, based on

an estimated reduction in AFDC recipients of 4,004-6,700 people.

III. Real Value of Housing:

Also applying econometric analysis, estimated that over the long run, every 1 percentage point reduction in unemployment rate in the four eastern most Labor Market Areas (LMA's) in Connecticut will increase better than 7.7 percent in real housing prices in the 4 LMA's. Converting casino-related employment projections into decline in unemployment rates, it is estimated that real housing prices in the 4 LMA's will increase by $1.177 billion by late 1994. In addition, including the effects of non-casino related employment, the total increase in real housing prices is estimated to be $6.1 billions by the end of this decade.

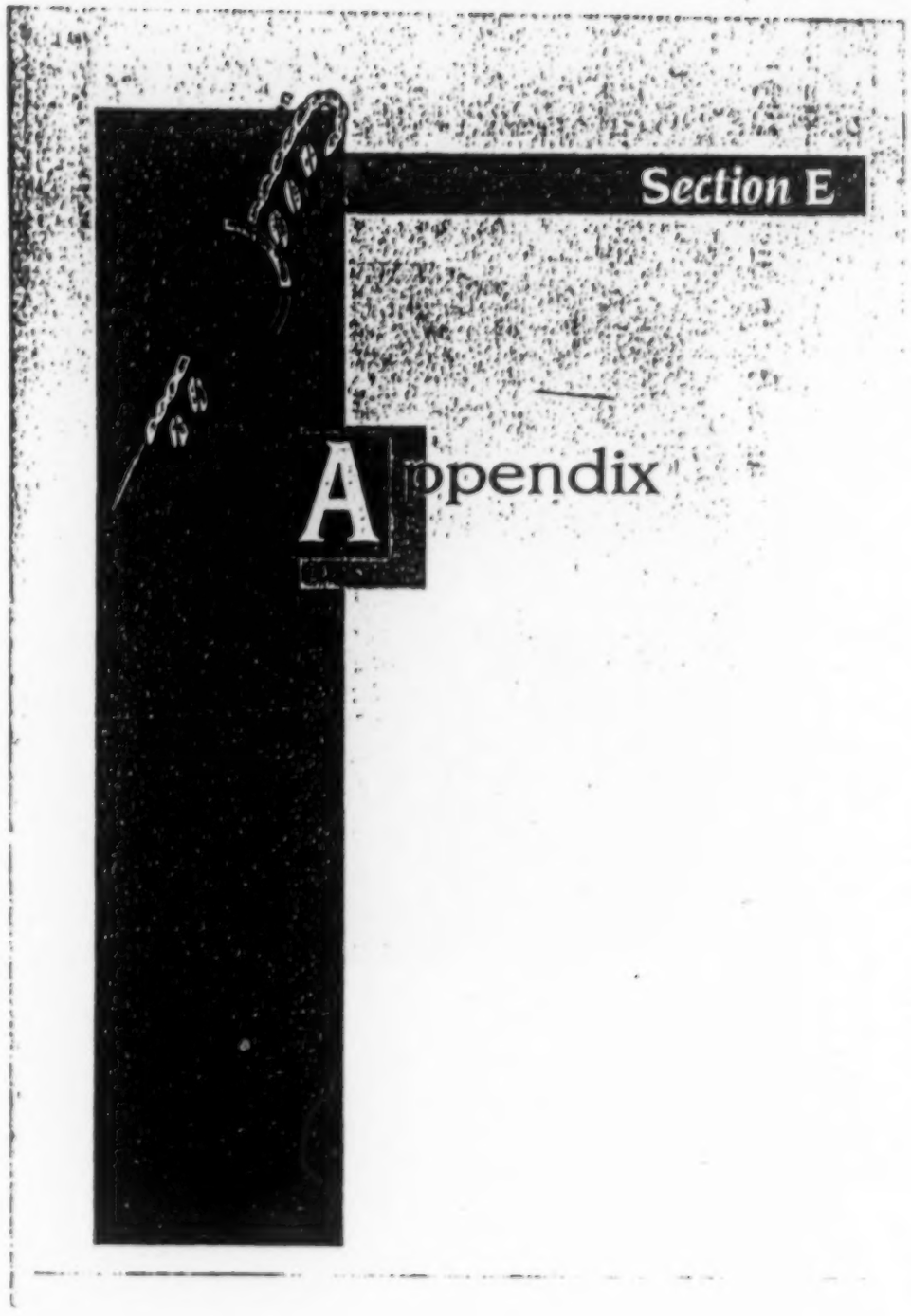
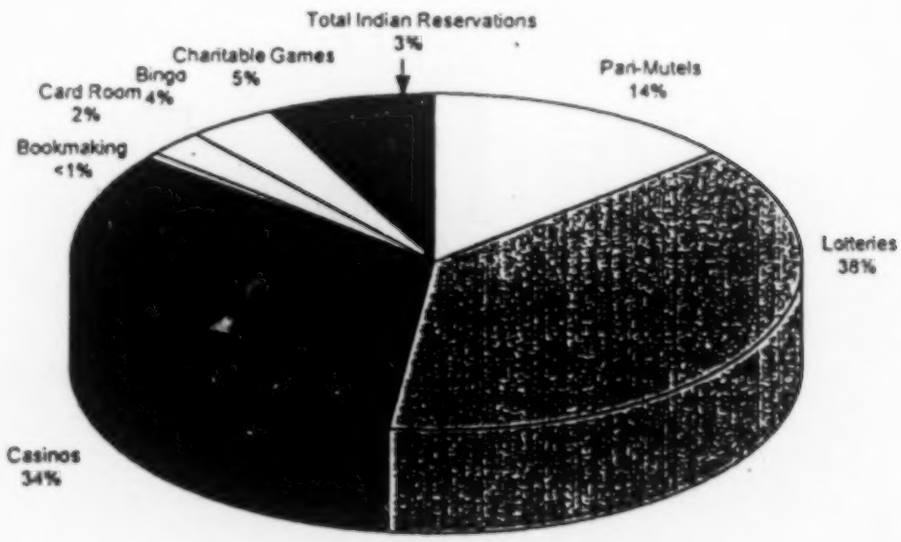


EXHIBIT A

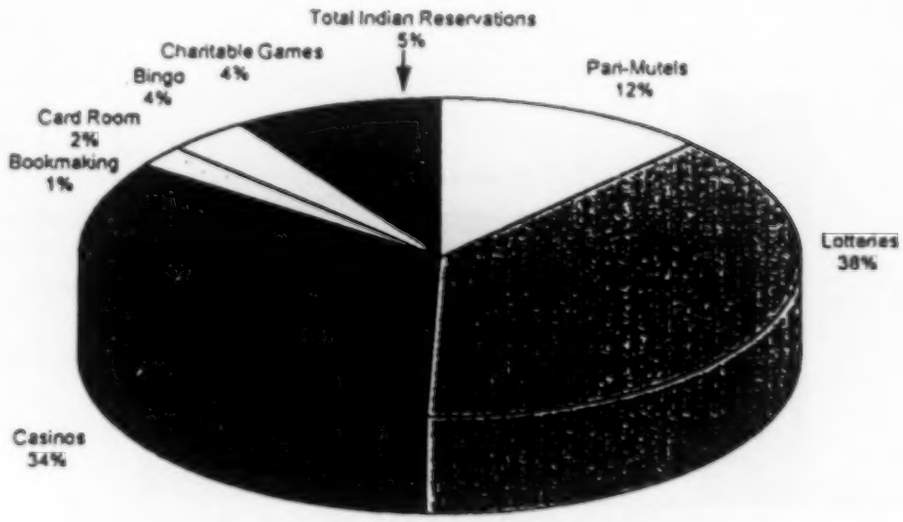
Total US Gaming Revenues Percentages By Industry - 1991



Source: Gaming and Wagering Business, 1993

EXHIBIT B

Total US Gaming Revenues Percentages By Industry - 1992



Source: Gaming and Wagering Business, 1993

EXHIBIT C

Indian Gaming
Trend in Total Revenues 1985-1992

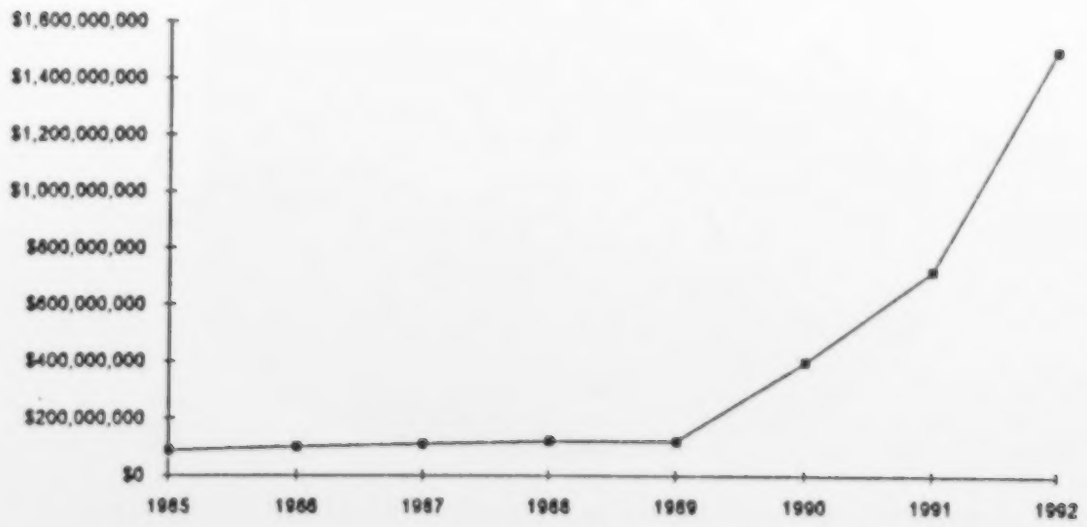
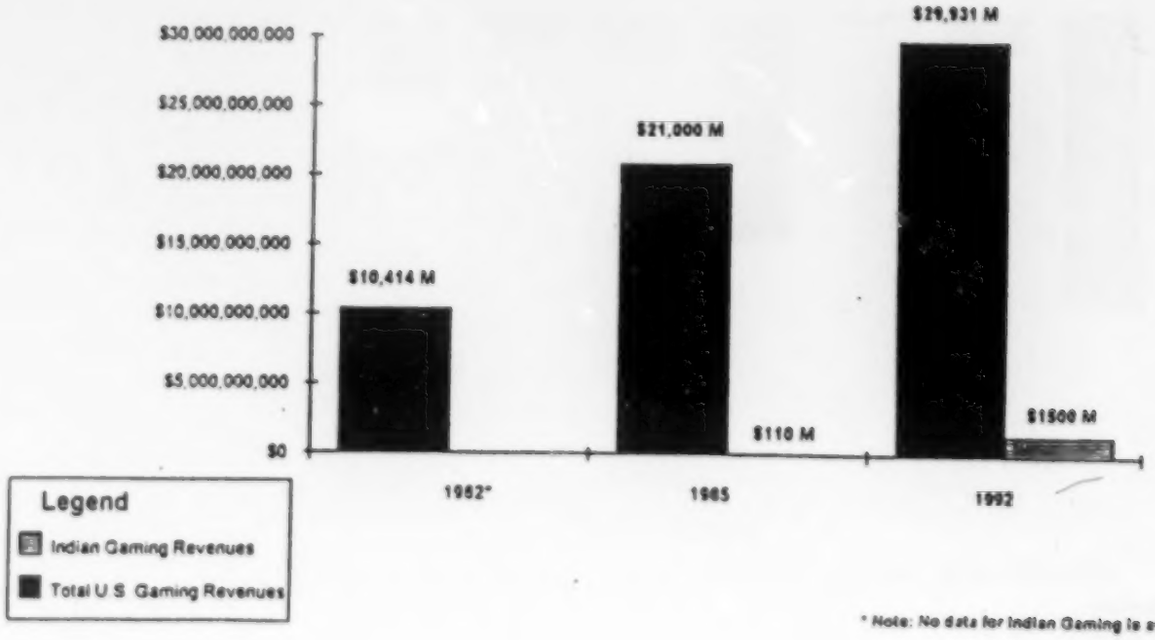


EXHIBIT D

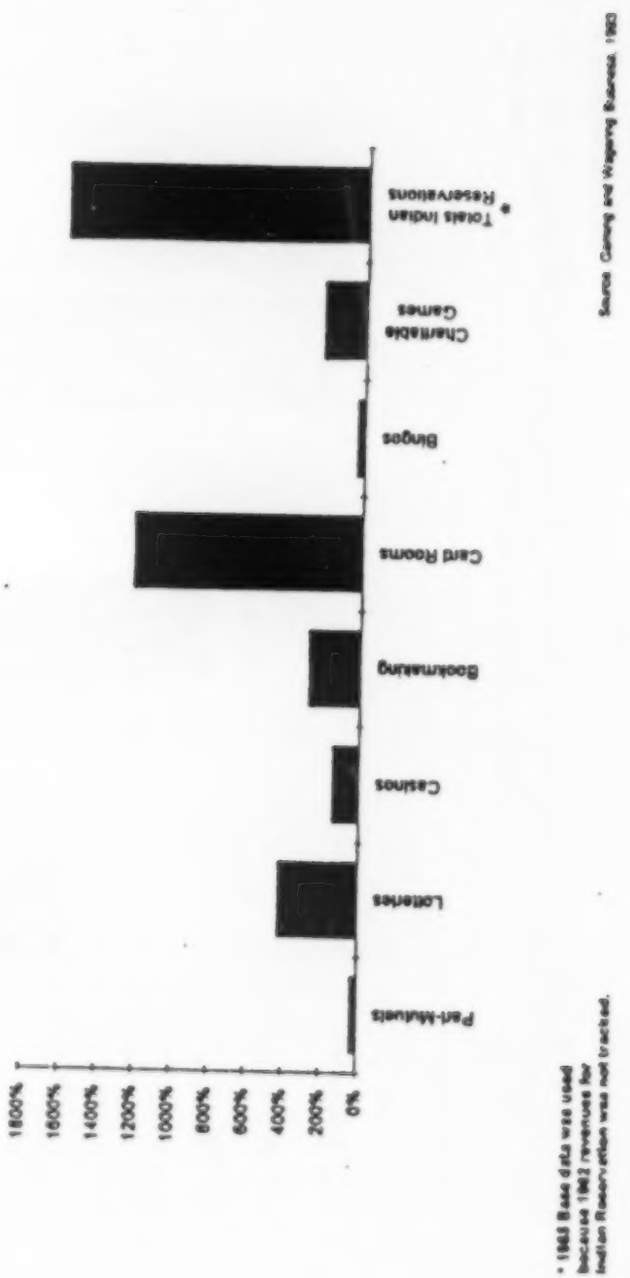
Total US Gaming vs. Indian Gaming Revenues
1982, 1985 and 1992



* Note: No data for Indian Gaming is available for 1982

EXHIBIT E

Percent Change of U.S Gaming Total Revenues 1982-1992



Source: Gaming and Wagering Business, 1993

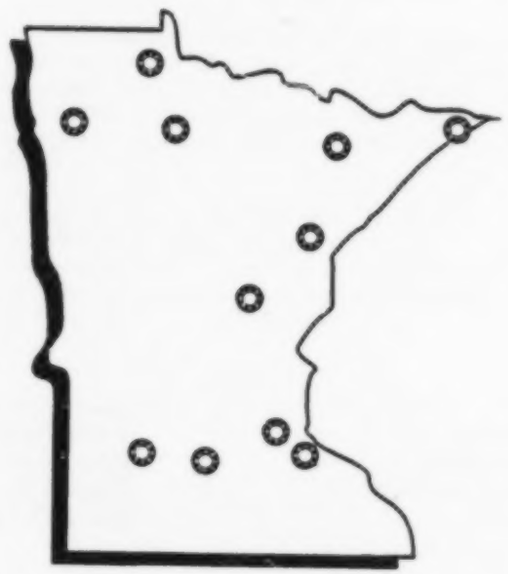
* 1983 Base data was used because 1982 revenues for Indian Reservation was not tracked.

Appendix 4

MIGA

Minnesota Indian Gaming Association

Economic Benefits of Tribal Gaming in Minnesota 1992



MIGA

Minnesota Indian Gaming Association

Economic Benefits of Tribal Gaming in Minnesota 1992

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MIGA

Minnesota Indian Gaming Association

April 30, 1993

The Minnesota Indian Gaming Association (MIGA) is pleased to present this second authorized study of the economic benefits of Tribal gaming in Minnesota. The federal Indian Gaming Regulatory Act of 1988 provided a statutory foundation for Tribal gaming "as a means of promoting economic development, self-sufficiency and strong Tribal government." This study was undertaken to assess the continuing economic impact of Tribal gaming in Minnesota. Authorized by MIGA, the study presents data gathered from nine of the eleven Minnesota Indian Tribes operating gaming casinos. The data identify economic benefits from Tribal gaming in the areas of :

- Increased Tribal revenues to support Indian government services, economic development and self-sufficiency;
- Increased jobs and employment;
- Reduced public assistance expenditures;
- Increased jobs from secondary spending and construction; and
- Increased out-of-state visitor spending in Minnesota.

The study concludes that Tribal gaming in Minnesota is well on its way to becoming one of the state's largest employers. As this industry continues to develop, other benefits associated with economic progress will be studied. Visible progress is already occurring on Minnesota's Indian reservations in community development, education, health care, nutrition, housing and infrastructure improvements. This study confirms that non-Indian sectors of Minnesota's economy are enjoying sufficient benefits as well.

Tribal gaming occupies a unique niche in the fabric of our society. Unlike other industries, it is operated by sovereign governments to finance programs and services for its citizens, to build economic self-sufficiency on Indian reservations, and to create economic opportunity for Indians and non-Indians alike. In this context, it is clear that Tribal gaming in Minnesota is achieving the objectives set forth by the U.S. Congress.

Sincerely,

Myron Ellis,
Chairman, MIGA

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EXECUTIVE SUMMARY

Study Participants

The Minnesota Indian Gaming Association (MIGA) has authorized a study of the economic benefits of Tribal gaming in Minnesota. A professional service firm, KPMG Peat Marwick, provided the technical support and analysis to conduct the study. The following nine MIGA members participated in the study:

- Bois Forte Chippewa
- Fond du Lac Chippewa
- Grand Portage Chippewa
- Leech Lake Chippewa
- Lower Sioux
- Mille Lacs Chippewa
- Prairie Island Sioux
- Shakopee Sioux
- Upper Sioux

Fiscal years are not the same for each Tribe. Some use June 30 and others use September 30 or December 31 as the end of the fiscal reporting period.

Results from the study identified several significant economic benefits.

Gaming Proceeds

During fiscal years 1991 and 1992, the gaming operations of the nine study participants produced the following financial results:

	1992	1991
Revenues after payouts	$390 million	143 million
Less expenditures	223 million	89 million
Available proceeds	$167 million	54 million

The gaming expenditures are benefiting employees and a variety of suppliers and service providers. The proceeds from gaming are being used for purposes consistent with the

National Indian Gaming Regulatory Act of 1988 to:

- Fund tribal government;
- Provide for the general welfare of the Tribe;
- Promote economic development;
- Contribute to charity; and
- Help fund local agency operations.

Proceeds are being used for direct human services, education, housing and infrastructure improvements as well as for investment in the Tribal business enterprises.

Job Creation and Employment

Tribal gaming has resulted in 9,975 new jobs in Minnesota for persons working directly for the Tribal gaming enterprises. Indians hold approximately 27% of the new jobs and non-Indians have benefited from 73% of the new jobs. A majority of the jobs have been created in the non-urban areas of the state where steady jobs on an annual basis are in short supply.

If these jobs were attributed to a single employer, Tribal gaming would be one of the 10 largest employers in Minnesota.

Public Assistance Savings

An analysis of gaming operations in non-urban counties shows a strong correlation between an increase in jobs in the non-urban counties with Tribal gaming facilities and a decrease in AFDC recipients. The number of AFDC recipients decreased by 14% between 1987 and 1992 in the eight non-urban counties with Tribal gaming facilities while the state-wide number of recipients increased 17% for the same period. This produces a benefit to the state in the form of reduced spending for public assistance.

Indirect Employment

A study prepared by the Minnesota Planning Agency estimates an additional 20,000 indirect employment jobs are being supported by Tribal gaming.

Out-of-State Visitor Spending

It is estimated by the Minnesota Planning Agency that out-of-state visitors spent $245 million on various travel related goods and services in fiscal year 1992. This level of spending could support an estimated 7,600 jobs.

Job Summary

The following is a summary of the total number of jobs that could be supported by Tribal gaming based on the methodology used in the study.

Source of jobs	1992	1991
Direct	9,975	4,730
Indirect estimate	20,000	5,300
Visitor spending estimate	7,600	600
Total	37,575	10,630

Other Benefits

There are likely additional benefits from Tribal gaming that have not been quantified due to a lack of data including:

- Increased payroll tax revenues;
- Increased unemployment insurance revenues;
- increased sales tax revenue from visitor spending;
- Increased sales tax revenue from induced spending;
- Improved housing;
- Improved health care;
- Increased job skills; and
- Improved self-esteem from being employed.

STUDY BACKGROUND AND APPROACH

Background

The Minnesota Indian Gaming Association (MIGA) is an organization that includes members from each of the eleven Tribes in Minnesota. These communities are federally recognized Tribes and each has an independent tribal government.

MIGA has authorized a second study of the economic benefits of Tribal gaming in Minnesota. The professional service firm of KPMG Peat Marwick was engaged by the members to provide technical assistance and analysis with respect to the study elements. Exhibit 1 is a listing of the Indian Tribes and gaming facilities that participated in the study. Since some Tribes and gaming facilities did not participate, the aggregate data included in the study is less than the total Tribal gaming picture in Minnesota.

Exhibit 1

PARTICIPATING MEMBERS

Tribe	Gaming Facility
Bois Forte	Fortune Bay
Fond du Lac	Fond du Luth and Big Bucks
Grand Portage	Grand Portage Casino
Leech Lake	Northern Lights and Palace Bingo
Lower Sioux	Jackpot Junction
Mille Lacs Chippewa	Grand Casino Mille Lacs and Hinckley
Prairie Island Sioux	Treasure Island
Shakopee Sioux	Little Six and Mystic Lake
Upper Sioux	Firefly Creek

Approach

Data was based on the 1992 fiscal year. Data collection forms were developed and included the following elements:

- Revenue — Revenue data for each gaming facility was obtained directly from the facility. The term revenue in casino operations is generally defined as the win from gaming activities, that is, the difference between gaming wins and losses, not the total amount wagered. All reference to revenue in this study is after payouts and does not include the total amount wagered.
- Source of Revenue — Revenue data has been classified by major source. The major classifications of Tribal gaming revenue in this study include:
  - — Video games,
  - — Blackjack,
  - — Bingo and pull tabs, and
  - — Concessions and other.
- Operating Expenditures — Expenditure data was obtained from each gaming facility and classified into the following categories:
  - — Salaries and wages,
  - — Payroll taxes and benefits,
  - — Advertising/promotion,
  - — Utilities, and
  - — All other operating expenditures.
- Use of Proceeds — Information was obtained on the use of proceeds made available from gaming activities. The major classifications for use of proceeds include:
  - — Direct services and per capita payments to members,
  - — Human services and education,
  - — Charitable contributions,
  - — Investments,

— Management fees,
— Other tribal government trusts,
— Enterprise facilities,
— Public infrastructure, and
— Housing.

Other areas of economic analysis included the following:

- Employment Trends — Data was obtained on the number of jobs created by Tribal gaming including the direct jobs at the gaming facilities and the indirect jobs resulting from gaming expenditures.
- Public Assistance Trends — Data was obtained on the numbers of persons receiving public assistance in Minnesota to analyze any changes that might be related to the growth in gaming employment.

Sources of Data

Tribal gaming is a relatively new business activity in Minnesota and data sources are in a developmental stage. Fiscal data related to gaming operations was obtained from internal reports prepared by the accounting and administrative staffs of the participating MIGA members. The staff personnel have attempted to answer all inquiries essential to conducting the study and have made reasonable efforts to present accurate data. The fiscal data was not independently verified to other documents. It is possible that the data presented includes inconsistencies in classification or other discrepancies because each facility has developed its own methods of reporting. Other sources of data are referenced where appropriate.

GAMING OPERATIONS: FISCAL DATA

Status of Tribal Gaming in Minnesota

The status of Tribal gaming in Minnesota has been documented in a report to the legislature submitted by the offices of the Governor and Attorney General and the Tribal State Compact Negotiating Committee, dated September 5, 1991. The following is a summary of items related to Tribal gaming operations in Minnesota:

- Indian Gaming Regulatory Act (IGRA) — Signed into law on October 17, 1988. The Act provides the regulatory framework for various forms of gambling on Tribal lands. A primary purpose of the Act is to provide a statutory foundation for Tribal gambling operations as a means of promoting economic development, self sufficiency and strong Tribal government.
- Video Games of Chance Compacts — between October 20, 1989 and the spring of 1991, the State of Minnesota entered into video compacts with the eleven Tribal governments in the state.
- Blackjack Compacts — between May and August of 1991, the State of Minnesota entered into blackjack compacts with the eleven Tribal governments in the State.

The actions of Congress and the State of Minnesota have established the regulatory framework for Tribal gaming. The Tribal governments have established gaming ordinances, built facilities and initiated operations pursuant to the evolving regulatory framework.

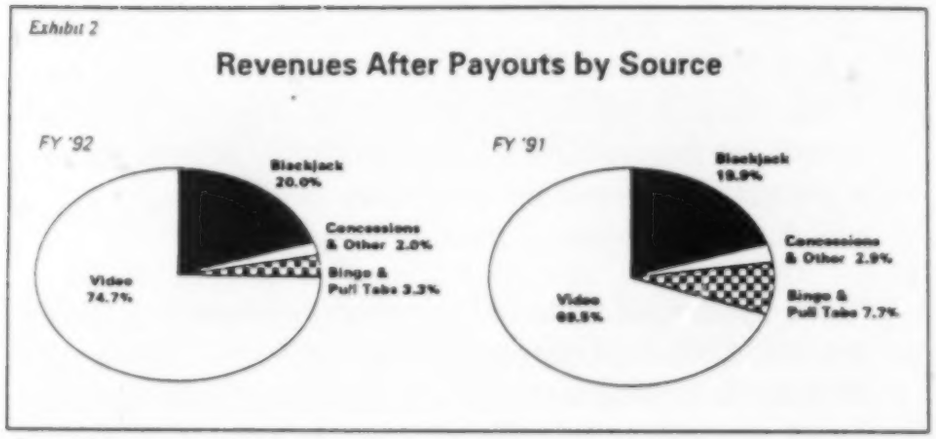
Gaming Operations–Revenues

Fiscal data was obtained from reports furnished by the study participants. Revenues reported are net of payouts. The following is a summary of revenues by major source in millions of dollars .

Revenue source	1992	1991
Video	$ 291.5	99.3
Blackjack	77.9	28.5
Bingo and pull-tabs	12.8	11.0
Concessions & other	7.8	4.2
Total	$ 390.0	143.0

Exhibit 2 illustrates revenue information by percent.

Exhibit 2



Source: Fiscal reports of study participants

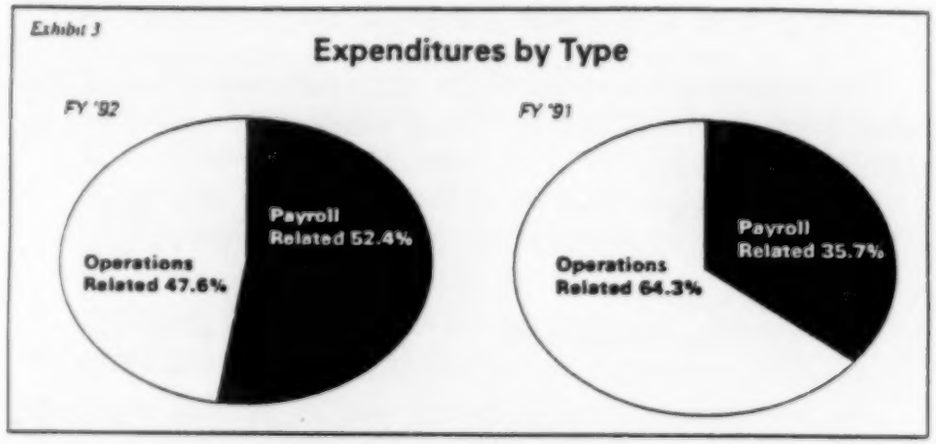
Gaming Operations–Expenditures

Fiscal data was obtained from reports furnished by the study participants. Expenditures were classified by major expenditure type. The following is a summary of expenditures by type in millions of dollars.

Expenditure type	1992	1991
Payroll-related total	$ 116.9	31.8
Operations-related total	106.1	57.2
Total	$ 223.0	89.0

Exhibit 3 illustrates expenditure information by percent.

Exhibit 3



Source: Fiscal reports of study participants

The category of operating expenditures includes various expenditures associated with the gaming operations such as advertising, utilities, training, security (if contracted), uniforms, supplies, maintenance, installation of equipment, business services and costs related to the use of facilities.

Gaming Operations — Use of Proceeds

The Indian Gaming Regulatory Act requires Tribal governments to adopt an ordinance governing the conduct of any gaming activity. The ordinance must prohibit the use of net revenues from any gaming for purposes other than to:

- Fund Tribal government;
- Provide for the general welfare of the Tribe and its members;
- Promote Tribal economic development;
- Donate to charity; and
- Help fund local government agency operations.

The following is a recap of the aggregate operations of the nine gaming operations for fiscal years 1991 and 1992 in millions of dollars:

Available proceeds	1992	1991
Revenue after payouts	$390.0	$143.0
Less expenditures	223.0	89.0
Available proceeds	$167.0	$ 54.0

For purposes of this study the use of gaming proceeds have been summarized as follows in millions of dollars.

Use of proceeds	1992	1991
Direct services	$ 39.5	$17.5
Human services and education	4.0	3.1
Charitable contributions	.8	—
General government and trusts	13.4	2.5
Management fees	8.3	3.6
Capital expenditure enterprise	32.0	27.3
Capital expenditure infrastructure	6.5	—
Housing	17.3	—
Investments and unallocated	45.2	—
Total	$167.0	$54.0

The following explanatory notes are provided to assist in understanding how gaming proceeds are being used by the Indian Tribes:

- Self Determination — The Indian Gaming Regulatory Act intended that Tribal governments be the primary beneficiary of gaming programs. Under broad guidelines established by the Act, Tribal governments have decision-making authority regarding this use of gaming proceeds.
- Aggregate Data — Data in the study has been aggregated. There are significant differences in the use of proceeds among the participating members.
- Capital Expenditures Enterprise — Approximately $27 million of fiscal year 1991 and $32.0 million of fiscal year 1992 proceeds have been expended for the construction, renovation or improvement of gaming facilities or is being held in short term investment accounts pending disbursement for construction projects recently completed or in progress.
- Per Capita Payments — The use of gaming proceeds is in large part driven by demographic factors. There are eleven Indian Tribes in the state of Minnesota: four Sioux and seven Chippewa. The Sioux communities have a much smaller population than the Chippewa communities (approximately 1,500 Sioux and 45,000 Chippewa by one 1991 estimate). The Sioux Tribes are much closer to population centers in the southern half of the state. The Sioux Tribes also have three of the larger gaming operations and are, therefore, in a better position to make per capita payments. The Chippewa Tribes have larger populations to provide for and smaller commercial markets. Therefore, the use of gaming proceeds in Chippewa Tribes is more likely to

be used to support general government and human services rather than per capita payments.

EMPLOYMENT TRENDS

Objective of Indian Gaming Regulatory Act (IGRA)

A primary objective of IGRA as stated in United States Public Law 100-497 is:

> *"to provide a statutory basis for the operation of gaming by Indian Tribes as a means of promoting tribal economic development, self-sufficiency and strong tribal governments."*

The trend in employment can be used to measure the accomplishments of economic development objectives.

Tribal gaming (primarily bingo and pull tabs) has been around for many years. High stakes bingo gained considerable publicity in 1982 when the Shakopee Mdewakanton Sioux opened the Little 6 Bingo Palace at Prior Lake (within the Twin City metropolitan area). Other Indian Tribes subsequently opened or expanded bingo operations in other parts of the state. During 1990, video slot machines were introduced in various operations and blackjack followed in 1991.

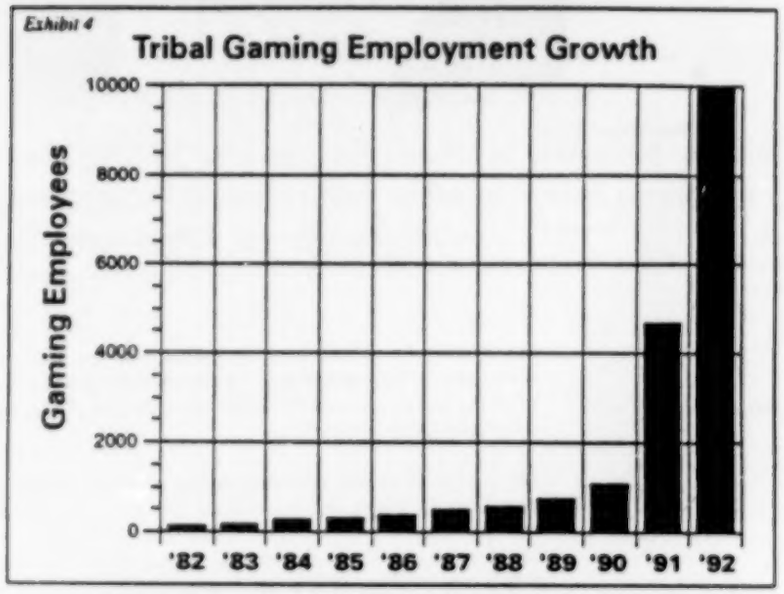
Tribal gaming operations and activities grew rapidly during 1991 and 1992 as newer facilities were opened.

Employment Trends

As the characteristics of gaming changed, the nature of the employment patterns changed. Bingo games were typically played in the evenings for a few hours. Some of the smaller operations did not have daily games. With the introduction of video slots and blackjack, the gaming audience changed, the gaming hours changed and the number of employees needed to staff the operations increased.

The number of persons employed by gaming operations was obtained from the study participants. Exhibit 4 illustrates the growth in employment from 1982 to 1992. As evident from the exhibit, the number of Tribal gaming jobs grew by over 4,000 during fiscal year 1991 and another 4,000 during fiscal year 1992.

Exhibit 4



The pay range for a majority of the jobs created is $5 to $10 per hour. While these wage rates are not impressively high, there are a number of beneficial attributes to the gaming jobs, including:

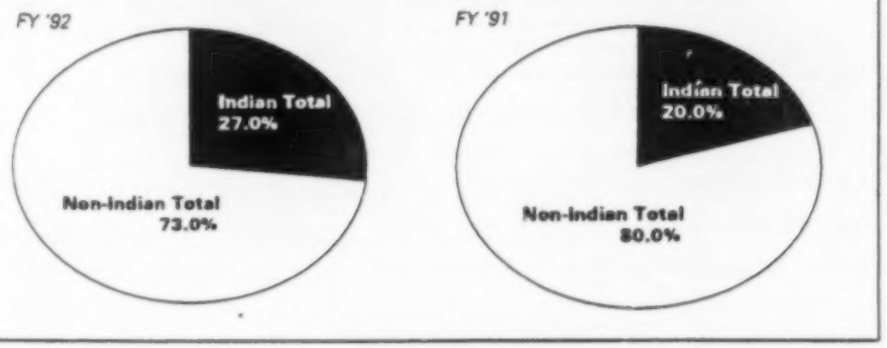
- Location of jobs in non-urban areas where more jobs are needed to balance the state economy;
- Location of jobs on or near Indian lands where unemployment has historically been excessive;
- Flexible hours allowing households to add incremental income without incurring substantial incremental cost for day care, transportation or clothing; and
- Opportunities to learn and develop basic job skills.

Indian and Non-Indian Job Distribution

An analysis of employment trends shows an interesting distribution between Indian and non-Indian employees. As shown in Exhibit 5, 20% of the gaming jobs were held by Indians in 1991 and 80% were held by non-Indians.

Exhibit 5

Overall Employment Ratio



The distribution of jobs between Indians and non-Indians is primarily attributable to demographics and location of the gaming facilities. There are more Indian job seekers in the northern part of the state where the gaming facilities are smaller.

The Bureau of Indian Affairs prepares periodic reports on the Indian population receiving services and the labor force estimates. The January, 1989, report estimates that 4,300 Indians living on or adjacent to reservations in Minnesota were not employed and were seeking work. Stated another way, 38% of the Indians between the ages of 16 and 64 were unemployed and seeking work.

During 1991 and 1992, the total number of jobs created by Tribal gaming could accommodate every unemployed Indian job seeker living on or adjacent to a reservation in Minnesota. Unfortunately, the jobs created were not all within a reasonable commute (25 miles) of the prospective Indian job seekers.

The gaming operations in the southern part of Minnesota are near the smaller populations of Indians. Of the study participants, five operations have the potential to virtually eliminate unemployment on the reservation. Tribal gaming is not the complete answer to Indian unemployment because:

- There will likely be demographic or geographic barriers to full employment; and
- There will likely be individuals who are unable to work in gaming facilities for a variety of reasons

The study participants are all aware of the need to use gaming proceeds to develop other areas of Tribal economies and create a variety of job opportunities.

Relative Size of Tribal Gaming Employment

The relative size of Tribal gaming employment was compared to the largest employers in Minnesota. Exhibit 6 lists the largest 25 employers. If Tribal gaming were a single corporation, the combined employment would rank in the top 10.

Exhibit 6

Employment Comparison to Minnesota's 25 Largest Employers

Rank	Company Name	Minnesota Employment
1	3M	23,000
2	Dayton Hudson Corporation	21,650
3	Northwest Airlines Inc.	17,500
4	Mayo Foundation	16,500
5	Health One Corp.	11,000
6	Honeywell Inc.	11,000
⊙	*Tribal Gaming 1992*	9,975
7	IBM Corporation	9,300
8	Lifespan Inc.	8,800
9	Norwest Corporation	8,151
10	Unisys Corporation	8,000
11	U.S. West	7,316
12	Fairview Hospital & Health Services	7,000
13	Northern States Power Company	7,000
14	First Bank System Inc.	6,426
15	Fingerhut Corporation	5,800
⊙	*Tribal Gaming 1991*	5,747
16	K mart Corporation	5,700
17	Health East Corp.	5,050
18	Control Data Corporation	4,864
19	J.C. Penney Company Inc.	4,800
20	Burlington Northern Railroad Inc.	4,500
21	United Parcel Service	4,200
22	The Prudential	4,100
23	Sears Roebuck and Company	4,033
24	Gateway/Rainbow Foods Inc.	4,000
25	Andersen Corporation	3,960

Source: Minnesota Department of Trade and Economic Development Report of Minnesota's Largest Corporate Employers, September 10, 1991

PUBLIC ASSISTANCE TRENDS

Job Creation and Public Assistance Relationships

A common economic development strategy is to develop industries and jobs in areas considered depressed. The rationale for this strategy is that creating a job in a depressed area will have a relatively greater benefit than creating a job in an economically progressed area. Depressed areas of a state or county will traditionally rely on and absorb comparatively more public assistance than a metropolitan area relative to their individual contribution to the state's economy.

The significance of the Tribal gaming industry in Minnesota is that a majority of the facilities, by virtue of being located on Indian reservations, are located in rural counties and distributed throughout the state. Consequently, the introduction of Tribal gaming has not only led to the creation of many jobs, but jobs which have a substantially greater economic benefit than would be the case in the urban areas.

Thus, when analyzing the benefits of the Tribal gaming industry, changes in demand for public assistance were considered.

Analysis Approach

Data pertaining to public assistance spending within the state was obtained from the State Department of Human Services. After considering the major public assistance programs, the Aid to Families with Dependent Children (AFDC) program was selected due to its significance in the overall public assistance environment. In the state of Minnesota, the AFDC program currently serves 63% of the Indians receiving public assistance, and 45% of all recipients receiving public assistance (making AFDC the largest sin-

gle human service program in the state in terms of recipient counts).

AFDC recipient counts is selected counties covering the period from 1987 to 1992 were analyzed. Because of the relative newness of Tribal gaming, identifiable trends would most likely be evident in that time period.

Only those non-urban counties with Tribal gaming facilities were considered. These parameters were used because, in such counties, the gaming facilities have emerged as one of the major employers. Any fluctuations in AFDC demands would more strongly correlate to the presence of Tribal gaming than it would in an urban area. A wider range and number of economic factors would influence a change in public assistance patterns in an urban area. Given the criteria, Cass County containing the Northern Lights and Palace Bingo facilities, Cook County containing Grand Portage Casino, Goodhue County containing the Treasure Island facility, Mahnomen County containing the Shooting Star Casino, Mille Lacs County containing the Grand Casino, Pine County containing the Grand Casino Hinckley, Redwood County containing the Jackpot Junction facility, and Roseau County containing the Lake of the Woods Casino were studied.

Recipient count trends in each selected county were then compared to the trends in the state as a whole and to the largest urban counties, Hennepin and Ramsey.

Recipient Trends

The results of this analysis suggest that the employment generated by the Tribal gaming industry is reducing the demand for AFDC services and expenditures, and is therefore fulfilling one of the main goals of the State/Tribal compact — economic development.

Exhibit 7 displays the number of AFDC recipients for Hennepin and Ramsey counties, the state of Minnesota, and the four non-urban counties containing major Tribal gaming operations.

Exhibit 7

AFDC RECIPIENT COUNTS

	1987	1991	% Increase (Decrease) from 1987	1992	% Increase (Decrease) from 1987
Hennepin	42,349	53,524	26%	54,665	29%
Ramsey	24,298	33,169	36%	35,280	45%
State of MN	156,932	181,021	15%	183,676	17%
8 non-urban counties with gaming*	6,002	5,255	(12%)	5,137	(14%)

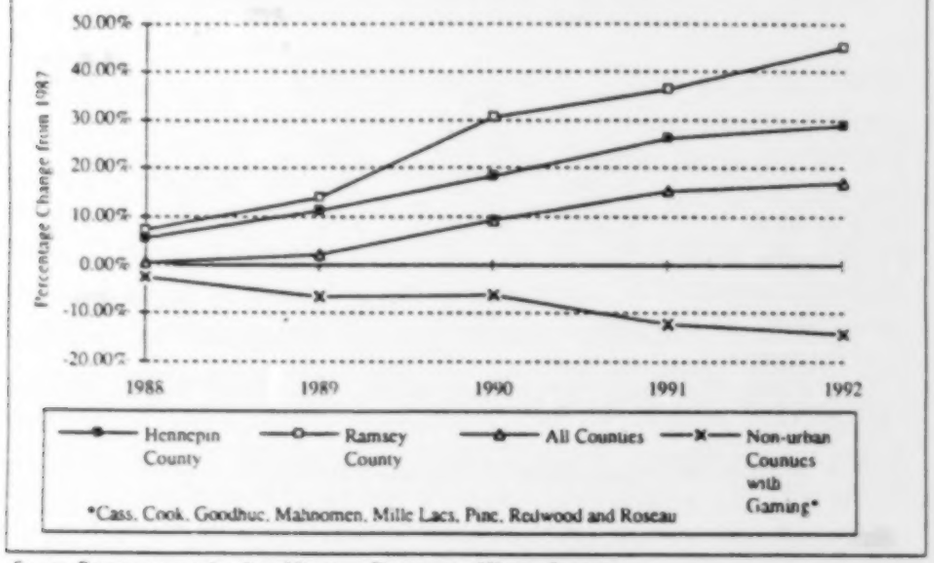
* Cass, Cook, Goodhue, Mahnomen, Mille Lacs, Pine, Redwood and Roseau

Source: Minnesota Department of Human Services.

From 1987 to 1992, the number of AFDC recipients increased by 45% in Ramsey County, 29% in Hennepin County, and 17% in the state as a whole. During the same five-year period, the combined number of AFDC recipients in the eight non-urban counties with gaming declined by 14%. Exhibit 8 graphically displays the percentage change from 1987.

Exhibit 8

Human Services—Changes in AFDC Recipient Counts



Source: Recipient count: data from Minnesota Department of Human Services

The declines in AFDC recipients in the non-urban counties may consequently free up federal and state resources which could be used to help offset the cost of increased recipient numbers in other counties.

The presence of Tribal gaming in Minnesota has led to many jobs. These jobs are proportionately employing a large number of people (Indian and non-Indian) who might typically have difficulty finding a job and depend upon state and federal assistance for their livelihood. This in turn relaxes some constraints on public budgets and allows for further economic development growth.

INDIRECT EMPLOYMENT

A study prepared by the Minnesota Planning Agency used the Regional Economic Model, Inc. (REMI) to estimate the gross direct, indirect and induced annual statewide impact of Tribal gaming in Minnesota as follows:

Total jobs	32,700
Direct jobs at January 1993	10,353
Indirect jobs	22,347

See Minnesota Planning Agency publication, *Minnesota Gambling 1993*, page 11.

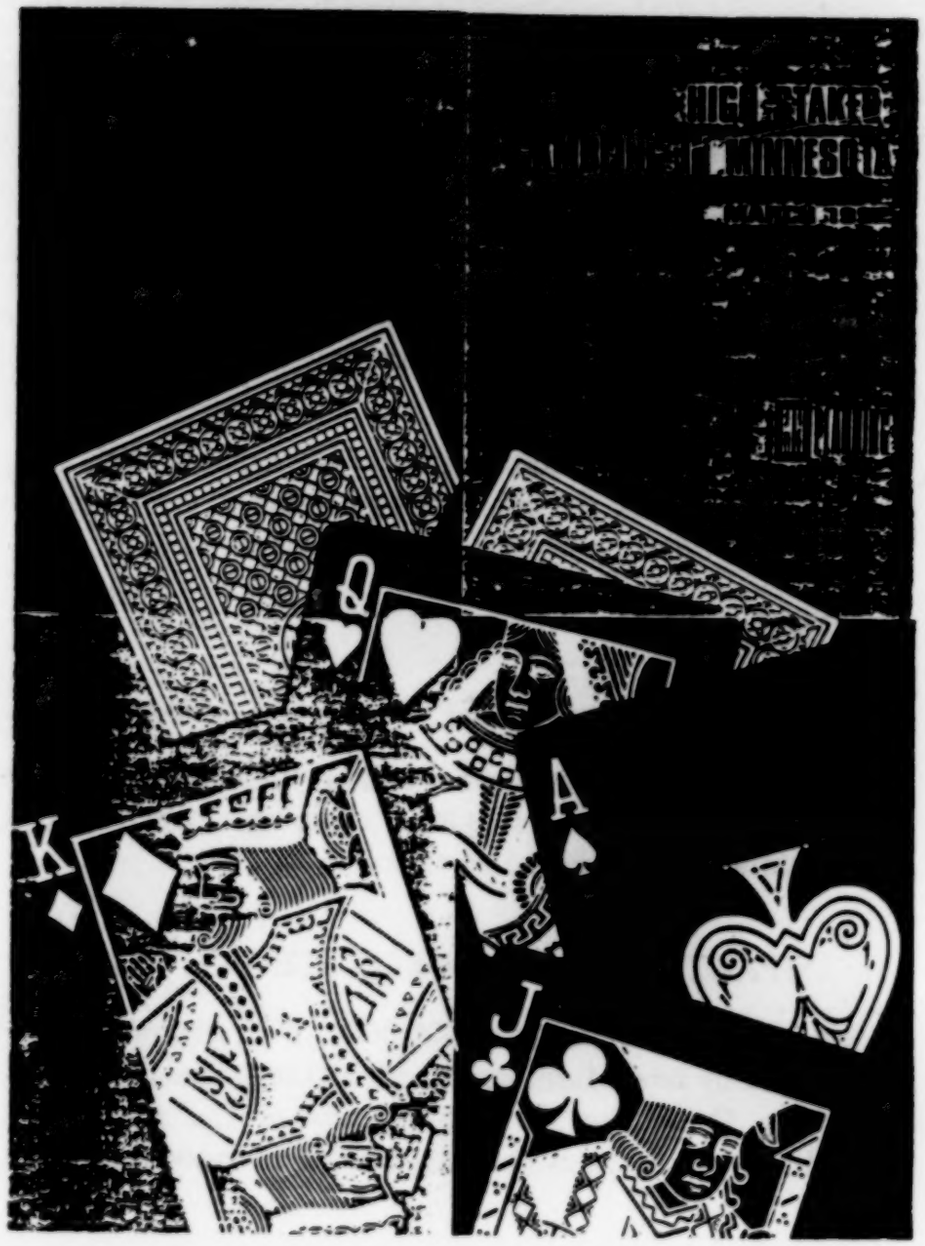
OUT-OF-STATE VISITORS

A study by the Minnesota Planning Agency estimated that 20% of all visitor days to casinos are by non-Minnesotans. The REMI model used in the study estimated the total impact of visitors as follows:

Jobs	7,600
Gross product (value of goods and services)	$245 million

See Minnesota Planning Agency publication, *Minnesota Gambling 1993*, page 11.

Appendix 5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ESTIMATED GROSS ANNUAL ECONOMIC IMPACT OF TRIBAL GAMING

- Actual casino employment (Jan 1992): 5,747 people
- Estimated annual visitor days: 5.9 million
- Estimated amount wagered (1991): $900 million
- Estimated gross revenues to casinos: (after prizes, 1991) $180 million

Using these figures, the Regional Economic Model, Inc. (REMI) estimates the gross direct, indirect and induced annual statewide impact of Tribal gaming as follows:

- Jobs 13,700 jobs
- Gross product (value of goods and services) $550 million

Major categories of jobs generated are eating and drinking establishments, retail, lodging, cleaning, construction, wholesale and professional services.

IMPACT FROM OUT-OF-STATE VISITORS

An estimated 15 percent (900,000) of all visitor days to casinos are by non-Minnesotans. Many come specifically for gambling. Others are tourists already in the state. The REMI model estimates the total impact of these visitors to be:

- Jobs 2,300
- Gross product (value of goods and services) $90 million

The estimates reflect total activity derived from tribal gaming, not all of which is *new* activity. Some represents a shift of Minnesota and tourist consumer expenditures from other activities. Some is new economic activity generated by

new tourist spending or increased resident spending. These estimates are approximations based on annualization of limited available monthly data. Available economic models are not easily calibrated for the gaming industry.

Source: REMI model, MN Office of Tourism, MN Planning estimates.

Appendix 6

MINNESOTA GAMBLING 1993

LCPLANNING

PERCENT OF TRIBAL GAMING CUSTOMERS FROM OUTSIDE MINNESOTA

Grand Portage Casino, Grand Portage	90%
Lake of the Woods Casino, Warroad	50%
Jackpot Junction Casino, Morton	42%
Shooting Star Casino, Mahnomen	35%
Treasure Island Casino, Red Wing	25%
Big Bucks Casino, Cloquet	20%
Fond du Luth Casino, Duluth	20%
Northern Lights Casino, Walker	20%
Fortune Bay Casino, Lake Vermilion	15%
Mystic Lake Casino, Prior Lake	15%
Grand Casino Hinckley, Hinckley	12%
Grand Casino Mille Lacs, Garrison	12%
Firefly Creek Casino, Granite Falls	10%
Palace Casino, Cass Lake	10%

- The percentage of non-Minnesotans visiting tribal casinos increased from 15 percent in 1991 to 20 percent in 1992.

- Total visitor days increased from 6 million in 1991 to 12.9 million in 1992.

Source: Tribal officers and casino managers.

. . . time of this report, information was not available on the effect of recent developments on bars and restaurants in casino and adjacent counties.

Census data for 1990 shows that 44 percent or 20,730 Minnesota Indians were living in poverty, compared to 10 percent of the general population. The unemployment rate for Indians in 1990 was 20 percent, compared to 7 percent for the general population. Recent figures show Indian employment at casinos increasing by more than 87 percent in the past year, to just over 3,000 in January 1993.

The Mille Lacs Band of Ojibwe, owners of Grand Casino Mille Lacs and Grand Casino Hinckley, report they have provided jobs for any band member wanting to work. The Shakopee Mdewakanton Dakota Community, owners of Mystic Lake Casino, initiated a program for urban Indians from Minneapolis and St. Paul, offering job training and transportation from inner-city areas to the casino. One hundred twenty Indians participate in this program, which has plans to expand to non-Indians.

Job creation for non-Indians has exceeded that of Indians. Indeed, one might see Indian gaming as the largest federal employment scheme in many years. This is noteworthy because the gambling industry employs large numbers of people in jobs that require only short-term training — the type of jobs that increasingly have been shifted to less-developed countries in other industries. Indian casinos also employ growing numbers of professionals in marketing, accounting, management and security. Tribal officials report that Indian casinos employ 10,350 workers, of whom 8,400 work full time.

The number of visitor days to casinos by non-Minnesotans nearly tripled between 1991 and 1992. If a person spends all or part of a day at a tourist-related facility, it is counted as a visitor day. Out-of-state visitors to casinos are having a significant economic effect on Minnesota. According to the Department of Trade and Economic Development these visitors were responsible for a $245 million dollar increase in the state's gross product and the creation of 7,600 jobs. Estimates were developed using the Regional Economic Model and represent total economic activity derived from tribal gaming, not all of which is new activity. In part, these estimates represent a shift of Minnesota and out-of-state tourist consumer expenditures from other activities. The numbers also include new economic activity generated by new tourist spending or increased resident spending.

Jobs created directly or indirectly by casino gambling have brought many people from welfare to the work force. In the 10 casino counties, the average number of people receiving Aid to Families with Dependent Children each month declined by 3.1 percent from 1990 to 1992; this decline represents 574 people moving off welfare. At the same time, the economic recession was increasing the number of recipients in the rest of the state by 14.6 percent. If there had been no casinos, and the welfare rate in the 10 counties had climbed as fast as the rest of the state, the costs of AFDC would now be $7 million per year higher, not including additional medical benefits or food stamps.

The new jobs have gone mainly to the American Indian community and the white population; both groups show a reduction in statewide AFDC benefits. All other racial groups had an increase in AFDC recipients. From 1991 to 1992, the number of adults statewide on AFDC decreased 6.4 percent for American Indians, from 4,451 to 4,168, and decreased 1.4 percent for whites, from . . .

Appendix 7

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED THIRD CONGRESS
SECOND SESSION
ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

MAY 17, 1994
WASHINGTON, DC

PART 3

PRELIMINARY ESTIMATES OF ECONOMIC IMPACTS RELATED TO TRIBAL GAMING IN SOUTH DAKOTA

Submitted by: Dr. Michael K. Madden
Professor of Economics, University of South Dakota

Tribal gaming commenced in South Dakota in October of 1990 with the opening of the Royal River Casino in Flandreau. Since then four additional casinos have begun operations with the latest occurring in the spring of 1993. (Refer to the accompanying state map for their respective geographical locations.)

The Travel Industry

During the last nine years, I have been responsible for measuring the economic impacts of the vacation travel industry throughout the state and have accordingly tracked the economic impacts of tribal casinos as they have developed since 1990. The added travel spending in each of the counties in which tribal casinos are located has been substantial. Prior to tribal gaming, aggregate travel spending in these five counties totaled about $8 million with Codington County (Watertown) accounting for the bulk of this amount. In 1993, travel spending in these five counties amounted to about $31 million, an increase of 281%. Together, these counties now account for nearly 8% of tourism spending in the entire state compared to about 2% prior to tribal gaming.

Economic Impacts

Visitor spending translates into economic impacts such as jobs and earnings. Although no formal economic impact study has been undertaken to date, preliminary discussions have begun concerning the completion of such a study in the near future. Upon the completion of this research, more precise economic estimates will be possible. The following

economic impact highlights are based on an informal survey of the five operating tribal casinos.

- Direct employment in these casinos today amounts to more than 1,700. Assuming indirect employment impacts are similar to the South Dakota travel industry in general, an additional 570 jobs have been generated in the state through the multiplier effect. The total impact on employment is therefore estimated to be 2,270.

- It is estimated that 70 to 75 percent of the direct employment positions are held by Native Americans. This translates into an increase of between 1,200 and 1,300 new jobs held by Native Americans in South Dakota. The remaining 25 to 30 percent of the jobs represent new employment opportunities for South Dakotans living in communities near the casino operations.

- New wages and salaries in the regions surrounding the tribal casinos are estimated to be more than $25 million. Because most regions surrounding the tribal casinos are of low population, these added earnings have produced significant relative impacts on personal income within communities.

- Non labor operating expenditures amounts to at least $22 million for the five operating casinos. These expenditures are related to the required business purchases of goods and services from local and non local vendors. Examples include food and beverages, utilities and various other miscellaneous purchases.

- In addition, an undetermined amount of business activity occurs through spending by casino employees.

- It is estimated that tribal profits derived from gaming operations amounted to nearly $9 million in 1993.

- The use of these profits vary from tribe to tribe. Some of the resources have been allocated to infrastructure improvements relating to the casinos themselves. Examples include lodging and camping facilities as well as additions to casino capacity. Other economic development programs have also been pursued. Training and educational programs for tribal members have been instituted or expanded within a number of the tribes.

- At least $750,000 in contributions have collectively been made to tribal and other social programs. Examples include day care facilities, senior citizen programs, law enforcement and treatment centers.

The Future

There are at least three additional tribal casinos at some stage of planning in South Dakota. (See attached map.) If economic growth occurs in proportion to what has been demonstrated since 1990, a number of inferences can be drawn. Vacation travel spending related to tribal casinos will grow from $31 million today to $52 million. Total employment will increase from 2,270 to 3,770 and earnings are expected to grow from $22 million to $37 million.

Conclusion

From an economic standpoint tribal gaming has proven to be an effective rural economic development tool. The added economic activity has been distributed in the communities surrounding the casinos producing economic vitality which obviously would not have occurred in the absence of tribal gaming enterprises.

SUPPLEMENTAL SHEET

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TOPICAL OUTLINE

Preliminary Estimates of Economic Impacts Related to Tribal Gaming in South Dakota

A. The Travel Industry
B. Economic Impacts
C. The Future
D. Conclusion

	Jobs	% Ind.	% Non Ind.	Earnings	Op. Exp.	Soc. Spend	Infrastruct	% of Change in Tourism	
Fort Randall	654	66.0%	34.0%	$ 7,500,000	$12,400,000	$ 100,000	Sewer, Water, Lodging	146	6,306,597
Golden Buffalo	171	85.0%	15.0%	1,900,000	1,600,000	127,000	Lodging, RVPark A	131	6,711,688
Lode Star	141	91.0%	9.0%	1,100,000	1,027,000	100,000			1,342,966
Royal Fever	345	36.0%	64.0%	3,644,000	3,500,000	150,000		642	4,712,429
Dakota Sioux	391			4,400,000	3,700,000	150,000		66	13,125,165
	1,702	60.5%	30.5%	18,344,000	22,227,000	627,000			31,258,845
	562			7,337,600					
	2,264			25,681,000	22,227,000	627,000			
	3,771			42,785,546	37,030,182	1,044,582			

Appendix 8

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

APRIL 26, 1994
WASHINGTON, DC

PART 2

Testimony

of

JoAnn Jones, Tribal Chair,

&

Alvin Cloud, Gaming Liaison

Wisconsin Winnebago Nation

before the

Senate Committee on Indian Affairs

U.S. Senator Daniel Inouye, Chair

U.S. Senate Hearing Room

216 Hart Senate Office Building

Washington D.C. 20510

April 26, 1994

The Wisconsin Winnebago Nation has two nationally recognized firms that assist in management and oversight. The Accounting firm Arthur Anderson conducts all gaming audits and financial reports required under tribal, state and federal law.

Attorneys Process & Investigation Services Inc. (API), a nationally respected private investigative consulting agency, conducts the background investigations and regulatory enforcement required by tribal ordinance, tribal/state compact and IGRA. With API, we have a top notch private investigation firm of 35 people with an estimated 500 years of law enforcement experience at our disposal.

API assisted us by providing information that was not available from state or federal sources. As a result, serious suitability issues were identified and the Winnebago Nation took appropriate regulatory actions. This information helped our operations keep their integrity and protect our Nation. Again this information was not available to us from state or federal sources.

All prosecutions of state criminal law are provided by the State of Wisconsin under the tribal/state compact entered into by the Nation and the State in July of 1992.

Many people believe that Indian country cannot possibly have the level of security and control that Nevada and New Jersey have over their gaming operations. That is not true. The Wisconsin Winnebago have state-of-the-art security, surveillance, on-line accounting, and audit controls. The Winnebago employ nearly 1700 people at 3 casinos. More than 300 of these employees are working in the security, surveillance and accounting areas to insure the integrity of the games, to protect our customers and to protect the Winnebago Nation.

We have these controls because it our people's money that is at stake. We know what can happen. We want to do

everything that we can to protect these enterprises because it is our children's future that is at stake. We challenge anyone to come to the lands of the Winnebago Nation to review our personnel, procedures and equipment. If any governmental body, local, state or federal is doing more to protect the integrity of its games, its customers, and its citizens we want to know about it.

The Winnebago Nation's gaming operations are very successful in large part because the Nation has a strong and effective gaming ordinance; experienced legal, accounting and investigative personnel; and a dedicated Gaming Commission with all the regulatory and enforcement authority necessary for the maintenance of successful gaming.

Benefits of Indian Gaming

Indian gaming is not about gambling. It is about survival and bringing my people out of the third world conditions that they have lived in for generations. It is about sovereignty and the right of one government to operate free from the interference of another government. Finally, it is about an agreement and compromise worked out among sovereign governments.

When Congress established the National Indian Gaming Regulatory Act it said the act had three purposes: Promote tribal economic development, self sufficiency, and strong tribal government. Indian gaming in Wisconsin is doing all of these things and more.

I have heard the testimony given at the recent hearing regarding the positive impact that Indian gaming has had on not only tribal, but on local economies at well. The situation is not any different in Wisconsin, but the facts bear repeating.

The Winnebago Nation employs more than 2000 people. Nearly 80% of these people are employed at our gaming

enterprises. Employment has quadrupled in the last two years. More than 60% of these employees are non-Indian. More than 300 of our gaming employees came from the welfare rolls. Statewide, Indian gaming jobs took 800 people off welfare and 1400 more from the unemployment rolls. Casino income is the sole support for the families of nearly 80% of the casino employees. According to Health & Social Service Secretary Gerald Whitburn, state aid to Indian families has dropped. He says that Indian gaming is a major reason for this drop.

Indian gaming has also been a great benefit to the larger community. For example, in Sauk County where one of our casinos is located, unemployment in 1991 was 30% above the state average, now it is only 3% above the state average.

In Wisconsin alone, Indian gaming has created 7000 jobs. Is there someone that has 7000 jobs that will employ these Wisconsin people? According to a Dept. Of Commerce study, when government creates jobs it costs $20,000 per job. Does someone have the $140 million replace the 7000 jobs threatened by attacks on Indian gaming?

The Winnebago Nation has no natural resources and we do not have a significant land base, yet we are expected to provide the same governmental services that the Navajo or the Yakima tribes provide their members. We cannot depend on the federal government to give us the money to provide these services. We cannot depend on the state government to give us the money to provide these services. And we don't want to. We want to provide for our own.

To do this, we need a stable tribal economy. This economy must provide jobs for our people, both skilled and unskilled; this economy must return money back into our community and the pockets of our people; and finally, this economy must allow us to diversify so we can sustain our economy into the future. We know that diversification is the

key to economic survival and that is what we are doing. Gaming has provided the Winnebago with this kind of economy.

For too long our people have existed in poverty. They have been denied jobs. They have . . .

Appendix 9

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

APRIL 26, 1994
WASHINGTON, DC

PART 2

TESTIMONY
OF
BERNARD BOUSCHOR, CHAIRMAN
SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

APRIL 27, 1994

Dear Chairman Inouye and Members of the Committee:

I. Introduction

On behalf of the Sault Ste. Marie Tribe of Chippewa Indians, I wish to express our appreciation for extending to us this opportunity to discuss the implementation of the Indian Gaming Regulatory Act as it relates to Indian gaming operations in the State of Michigan. I am pleased and honored to address you with representatives of the National Indian Gaming Association and Tribal governments from across the Country.

The Sault Ste. Marie Tribe of Chippewa Indians wishes to express to the Committee our concern over recent calls to amend the Indian Gaming Regulatory Act to increase Federal or State regulation of Indian gaming. We believe the success of Tribal gaming operations in Michigan is proof of the fact that Tribal governments are capable of and are more successful when they have the primary role in regulating their own gaming operations.

II. Background

The Sault Ste. Marie Tribe of Chippewa Indians is the largest federally recognized Tribe in Michigan, with over 20,000 members. Located in Michigan's Upper Peninsula, the Tribe provides direct services to members in seven counties (Chippewa, Mackinac, Luce, Alger, Schoolcraft,

Delta and Marquette). Gaming revenues are essential to the provision of services to this population.

Although the Tribe has been conducting a Bingo operation for several years, a small casino was opened in 1985. In 1985 the Tribe began with a 10,000 square foot facility offering blackjack and poker and employing about 89 employees. Today the Tribe operates a 95,000 square foot gaming facility in Sault Ste. Marie, Michigan and another in St. Ignace, Michigan. These casinos offer a wide variety of games including slot machines. The gaming operations includes hotels, a restaurant and gift shops.

The Tribe's gaming operations now employ over 1600 people and produced over 100 million dollars in gross revenue last year. The Tribe is the sole owner and operator of all its' gaming operations.

After over five years of negotiation and litigation, a compact between each of the Michigan Tribes and the State of Michigan was finally signed in August, 1993.

III. Gaming Regulation

The compact between the Tribes and the State stands as a recognition of the Tribes' right to regulate their own gaming operations as sovereign governments, as well as their success at self regulation for over eight years. Under the compact with the State of Michigan, the Tribes maintain the primary responsibility for regulating their own gaming activities. The State's role is limited to monitoring Tribal regulation. The compact does, however, require that certain minimum standards be followed. For instance, the compact specifies that certain Michigan laws pertaining to employment be followed, the Tribes comply with the Bank Secrecy Act and that minimum standards be followed with regard to background checks. (See attachment #1, Compact between the Sault Ste. Marie Tribe and the State of Michigan).

Indian gaming operations in Michigan are operated free of any infiltration by organized crime. These casinos have not generated an increase in criminal activity. Indeed the Sault Ste. Marie tribe of Chippewa Indians works closely with the Federal Bureau of Investigation, criminal investigators with the Bureau of Indian Affairs, Michigan State Police and local police agencies. We have received the support of the Chief of Police of the City of Sault Ste. Marie, officials of the Michigan State Police and other law enforcement officials. (See the attached correspondence from Sault Ste. Marie City Police Chief Fitzgerald and the Chippewa County Prosector Pat Shannon). We consistently work with Canadian police authorities as we are located very near the U.S.-Canadian border. The Tribe has its' own public safety department comprised of thirteen officers. (See attachments; #2, Letter from the Detroit Police Officers Association, #3 Letter to Ted Gatzaros from the Wayne County Sheriff's Department, #4 Letter to Ted Gatzaros from the Wayne County Sherifi s Local 502, #5 Letter from Chief of Police of the City of Sault Ste. Marie to Governor John Engler, #6 Letter from Chippewa County Prosecutor Patrick Shannon to Governor Engler).

The biggest obstacle to effective law enforcement we currently face in Michigan is not inadequate regulation, but inadequate funding and jurisdictional barriers. Indeed, the Sault Ste. Marie Tribe is currently working with local government officials to fund law enforcement services to expand the financial resources available to local law enforcement agencies and thereby improve the availability of police services to local communities as well as the Tribal community. In addition, Michigan Tribes have been working to pass cross-deputization legislation in Michigan to help alleviate the problems imposed by jurisdictional barriers to prosecution of criminal activity.

Effective regulation of their own gaming operations is certainly one of the principal reasons for the success of the Tribe's gaming operations in Michigan. The Sault Ste. Marie Tribe has developed a system of regulation modeled after the systems utilized by the State of Nevada. The minimum internal control standards set up by the Nevada Gaming Control Board have been adapted for use in the Tribe's gaming operations.

In addition to these internal controls, the tribe conducts external, independent audits. The company conduction the audit, Anderson, Tackman & Company has been licensed by the State of Wisconsin for work in casinos. These audits have been approved by the office of the Inspector General.

The Tribe has spent a great deal of time and money to employ the best possible security measues to insure the integrity of its' gaming activities. We have included a state of the art camera security system utilizing over 364 cameras in one facility alone. The entire operation of the facility is captured on video tape. The tapes themselves are retained until the accounting paperwork is balanced out. We have purchased a player tracking system and a slot information system that allows us to compare the theoretical hold against the actual. Any discrepancy is investigated. Computerized accounting records are checked daily, weekly, quarterly, and finally yearly. Background checks are performed on every employee. This list in not meant to be exhaustive, but representative of the complexity of the regulatory measures we have taken.

The Tribe currently complies with the Bank Secrecy Act. W2-G forms for gambling winnings are required to be filled out and filed. 1042-S forms for non-resident aliens are filed. Currency Transaction Reports are filled out and filed.

In addition to these measures the Tribe has instituted an internal system of checks and balances. The management of

the gaming operations have been separated from tribal governmental operations with the creation of an Economic Development Commission. The Economic Development Commission must report to the Tribal Board of Directors as to the efficiency and integrity of the gaming operations. The casino comptroller and assistant comptroller are in fact Tribal employees, not casino employees. Therefore, they are wholly independent of casino management and report directly to the Tribal Chief Financial Officer. The legal representation of the Casino is provided by the Tribal Attorney's office. These officials are responsible to the Board of Directors. They in effect function as watchdogs for the Tribe.

Furthermore, the Tribe has adopted an extensive gaming ordinance which establishes a Tribal Gaming Commission independent of both the Tribe Board of Directors and the Economic Development commission. The gaming Commission will license all management officials and gaming employees as well as all gaming vendors. The Commission will possess independent audit powers (See attachment #7; Tribal Gaming Ordinance).

The Sault Ste. Marie Tribe is proud of its' success as well as the integrity of its' gaming operations. After all it is the Tribes that have the most to lose from badly run gaming operations. It stands to reason that the Tribes themselves are in the best position to regulate their own gaming operations, as it is they who have the most to lose. We have established ourselves as successful . . .

Appendix 10

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

APRIL 26, 1994
WASHINGTON, DC

PART 2

Sault Area
Chamber of Commerce
2581 I-75 Business Spur
Sault Ste. Marie, Michigan 49783
(906) 632-3301 • Fax (906) 632-2331
1-800 MI-SAULT

May 13, 1993

Governor John Engler
Capitol Building
Lansing, MI 48909

Dear Governor Engler:

Those of us in Sault Ste. Marie who feel responsible in some measure for maintaining a viable economy, shudder a bit when we hear of any potential threat to tribal gaming operations. Therefore, the Board of Directors of the Sault Ste. Marie Chamber of Commerce strongly supports an agreement between the State of Michigan and Native American Tribes which will assure that the tribes can continue present gaming operations on reservation lands.

There is no doubt that during the early years of the development of the Kewadin Casino in Sault Ste. Marie, many area business people were apprehensive and uncomfortable with the expansion of gambling. We predicted that there would be a great deal of negative impact. We could see the possibility of an increase in crime, even some involvement of organized crime, unfair competition which might destroy certain types of businesses and an unhealthy situation arising between the local community and an autonomous Indian society.

None of these predictions have come true. The Sault Tribe of Chippewa Indians are very good neighbors. The profits from their operations have made possible a dramatic improvement in the standard of living, not only for tribal

members, but for the entire community. Hundreds of jobs, good jobs, are available. Social programs, good housing, auxiliary businesses and new opportunities exist at a level we never anticipated. After recovering from the economic doldrums following the closure of the local air force base in the 1970's, our entire area is enjoying a revival. Tourism is growing and developing into a year-round industry, in part, because of the attraction of the casino. Visitors who come to gamble, see our beautiful peninsula, and return with the families to enjoy the sights.

It would be tragic to have anything happen which might reduce the benefits derived from tribal businesses. They, and we, need your support.

[SIGNATURES]

ATTACHMENT 10

Appendix 11

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

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APRIL 26, 1994
WASHINGTON, DC

PART 2

ST. IGNACE, MICHIGAN
OFFICE OF THE MAYOR
BRUCE J. DODSON

TO WHOM IT MAY CONCERN,
BERNARD BOUSCHER, SOO TRIBE

DEAR BERNARD,

I WISH YOU TO KNOW ABOUT THE IMPACT YOU AND THE CASSINO HAVE ON THE ECONOMY AND TOURISM IN THE STRAITS AREA. THIS VENTURE HAS NOT ONLY IMPROVED THE OVERALL ECONOMY OF THE AREA, BUT HAS REDUCED THE WELFARE ROLL OF OUR COUNTY BY THE LARGEST PERCENTAGE SINCE THE BUILDING OF THE MACKINAC BRIDGE, WHEN EVERYONE HAD A JOB. THE DIRECTOR OF THE DEPARTMENT OF SOCIAL SERVICES FOR MACKINAC AND LUCE COUNTY TOLD ME AT LUNCH LAST WEEK, THAT EVERY ABLE BODIED PERSON IS NOW WORKING IN A THREE COUNTY AREA, INCLUDING ALL MEN, WOMEN, AND TEENAGE PERSONS. THIS MUST BE A FIRST, AND IN AN AREA OF 47% UNEMPLOYMENT THE TRIBE HAS CERTAINLY BEEN ONE OF THE MAIN CONTRIBUTORS.

WITHOUT THE VENTURES OF THE SOO TRIBE, CASSINO, HEALTH CARE PROGRAMS, HOME BUILDING, ETC., THIS AREA WOULD BE IN A DIFFERENT FINANCIAL CONDITION IN THIS 1993 ECONOMY.

AS MAYOR OF THE CITY OF ST. IGNACE, I CERTAINLY HOPE YOU CONTINUE TO DEVELOPE AND EXPAND THE SCOPE OF THE SHORES CASSINO AND THE AREA. YOUR EXPERTISE IN ECONOMIC DEVELOPMENT IS SECOND TO NONE, AND IS A WELCOME CHANGE FROM THE OLD VIEW OF THE TRIBE. KEEP UP THE FINE WORK, AND WE ARE HERE TO HELP IN ANY WAY POSSIBLE.

SINCERELY,

BRUCE J. DODSON, MAYOR OF ST. IGNACE

Home of Michigan's Largest Antique Auto Show

ATTACHMENT 11

Appendix 12

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

S.2230

AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

JULY 19, 1994
WASHINGTON, DC

PART 1

STATEMENT OF RAY HALBRITTER
NATION REPRESENTATIVE
ONEIDA INDIAN NATION OF NEW YORK
BEFORE
THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
JULY 19, 1994

Mr. Chairman, my name is Gaiongwilode. I am also known as Ray Halbritter. I am the Nation Representative of the Oneida Indian Nation of New York. Thank you for this opportunity to appear before the Committee on Indian Affairs to present our view on a matter that is of vital concern to the Oneida Indian Nation of New York and other sovereign Indian governments. This matter is the future of Indian gaming as a means to empower Indian Nations and Tribes to be self-sufficient, self-governing and economically developed.

Congress enacted the Indian Gaming Regulatory Act in 1988 "to promote tribal economic development, tribal self-sufficiency, and strong tribal government." The Act is doing just that. No useful purpose would be served by replacing the Indian Gaming Regulatory Act with a new more complex statutory scheme and a larger federal bureaucracy to usurp the regulatory roles now negotiated, agreed upon and played by Indian Nations and States.

I will refer to the casino enterprise of the Oneida Nation to illustrate the current success of the Indian Gaming Regulatory Act.

A year ago today, the Oneida Indian Nation of New York opened Turning Stone Casino to the public. Turning Stone is the first Indian owned and operated casino over in New York State and the first casino of any kind in New York in over 100 years.

Because of Turning Stone, our once impoverished Oneida Nation is now the second largest employer in Central New York. We employ nearly 2000 people, 88% of whom are non-Indian. Our payroll is 1.1 million per week in an economically depressed area of Central New York. Thank to revenue from the casino, the Nation is able to house, feed, and educate its people, to nurture and enhance the Oneida's unique culture, to repossess ancestral homeland, to significantly benefit the local community, to research and develop other business enterprises, and to otherwise provide for the seven generations yet to come as our culture requires of us to do.

The Nation offers casino gaming subject to a comprehensive compact negotiated and entered with the State of New York. The Nation and the State negotiated for almost a year to produce a 41 page compact with 159 pages of detailed appendices of game rules, standards of operation and management, accounting requirements, and procedures to reimburse the State its regulatory costs.

The regulatory framework provided by the Indian Gaming Regulatory Act compacting process respects the sovereignty of both Nation and State. The State and the Nation, not the federal government, determine the games offered, their rules, and the other internal controls installed at the casino. The Nation-State compact also allocates responsibility between Nation and State regulatory authorities, sets the standards for licensing of facilities, employees and vendors, and establishes parameters for background investigations, law enforcement and all other . . .

SUMMARY OF DEVELOPMENT INITIATIVES

for the
ONEIDA INDIAN NATION OF NEW YORK

JUNE 1994

recognized Nations in the area and intermarried, there are very close social and economic ties with these other Nations. The Oneida Nation lineage is by matrilineal descent. Therefore, many Oneida children of mothers with other tribal affiliations are not included in the Oneida Nation membership. In addition, to be officially enrolled with the Oneida, an individual must be at least one-quarter degree Indian blood.

The Oneida Nation has chosen to include these other Federally recognized Indians in the spirit of cooperation for they are a part of the fabric of the larger community. The Nation continues to provide comprehensive services to all Oneida Indian Nation members as well as those federally recognized Indians with whom they have coexisted for centuries.

HISTORIC NEEDS

The problems and needs of the community are not unlike those typically plaguing Native Americans everywhere — and good portion of the non-Indian population as well. According to the 1991 Health Needs Assessment, the Oneidas are plagued by the same health problems confronting other American Indians today: obesity, sedentary life styles, diabetes, and alcohol/substance abuse. Preliminary results from the Oneida Nation Comprehensive Survey (ONCS) reveal that 65% of those Oneida households surveyed earned an annual income of less than $15,000 per year. Many Oneida members lived in environments where plumbing facilities were inadequate or nonexistent and insufficient heating presented a hazard to health and safety. Until recently there were no fire hydrants and solid waste disposal services were inadequate.

Before 1990, when economic initiatives infused needed resources, many Nation members were unable to develop educational skills needed to find suitable employment. A

44% unemployment rate, lack of community facilities, and inaccessibility to quality health care and other public services made life difficult for members. Many of the Nation's young people moved away seeking employment opportunities elsewhere. However, the majority of these people have expressed the desire to return to their Oneida home to look for permanent jobs and to make permanent homes.